96-UUU

AGRICULTURAL BARGAINING ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON DOMESTIC MARKETING,
CONSUMER RELATIONS, AND NUTRITION

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST AND SECOND SESSIONS

ON

H.R. 3535

JULY 10 AND 11, 1979
WASHINGTON, D.C.
AND
APRIL 18, 1980
SACRAMENTO, CALIF.

Serial No. 96-UUU

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AGRICULTURAL BARGAINING ACT

TUESDAY, JULY 10, 1979

House of Representatives,
Subcommittee on Domestic Marketing,
Consumer Relations, and Nutrition
of the Committee on Agriculture,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 1302, Longworth House Office Building, Hon. Frederick W. Richmond (chairman of the subcommittee) presiding.

Present: Representatives Panetta, Nolan, Glickman, Harkin, Symms, Heckler, and Grassley.

Staff present: J. Robert Franks, associate counsel; Peggy Pecore, clerk; Gary Norton, Bernard Brenner, James A. Culver, Joseph R. Crapa, Gerald R. Jorgensen, Linda Miller, and Frank Winston.

Mr. Panetta (acting chairman). The Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition is now in order for purpose of a public hearing on H.R. 3535, the Agricultural Bargaining Act of 1979.

[The bill, H.R. 3535, follows:]

I

96TH CONGRESS
1ST SESSION

H. R. 3535

To assure fair practices in agricultural bargaining.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 1979

Mr. PANETTA introduced the following bill; which was referred to the Committee on Agriculture

---

A BILL

To assure fair practices in agricultural bargaining.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Agricultural Bargaining Act of 1979".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. Agricultural products are produced in the United States by many individual farmers and ranchers scattered throughout the various States of the Nation. Such products in fresh or processed form, move in the channels of interstate and foreign commerce, or directly burden or affect interstate commerce. The efficient production and marketing of agricultural products by farmers and ranchers is a vital importance to their welfare, and to the general welfare. Because agricultural products are produced by numerous individual farmers, their ability to market and to bargain effectively for fair prices and terms of sale of their products is adversely affected unless they are free to join together in cooperative associations of producers as authorized by law. Interference with this right, or the failure of any handler of agricultural products to bargain in good faith with a cooperative association of producers as the representative and agent of such producers is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce. Therefore, it is declared to be the policy of Congress and the purpose of this title to establish standards of fair practices that shall be observed by handlers and associations of producers in their dealings in agricultural products, to provide standards for the accreditation of cooperative associations of producers of agricultural products for the purpose of bargaining, to define the mutual obligations of handlers and associations of producers to bargain with respect to the production, sale, and marketing of agricultural products, and to provide for the enforcement of such obligations.

DEFINITIONS

SEC. 3. When used in this title—

(a) "Accredited association" means an association of producers accredited in accordance with section 6 of this title.

(b) "Association" means any association of producers of agricultural products engaged in the marketing of such products, including marketing, selling, bargaining, shipping, or processing as defined in section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 1141(a)), or in section 1 of the Act entitled "An Act to authorize association of agricultural producers" approved February 18, 1922 (42 Stat. 388; 7 U.S.C. 291).

(c) "Handler" means any person, other than an association, engaged in the business or practice of (1) acquiring agricultural products from producers or associations for processing or sale; (2) grading, packaging, handling, storing, or processing agricultural products received from producers or associations; (3) contracting or negotiating contracts or other arrangements, written or oral, with producers or associations with respect to the production or marketing of any agricultural product; or (4) acting as an agent or broker for a handler in the performance of any function or act specified in (1), (2), or (3) above.

(d) "Person" includes one or more individuals, partnerships, corporations, and associations.

(e) "Producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable, or nut grower, including a grower or farmer furnishing labor, production management, or facilities for the growing or raising of agricultural products.

(f) "Secretary" means the Secretary of Agriculture.

UNFAIR PRACTICES

SEC. 4. (a) It shall be unlawful for any handler to engage, or to permit an employee or agent to engage, in any of the following practices, which are hereby defined as unfair practices:

(1) To coerce a producer in the exercise of his right to contract with, join, or maintain his membership in, or to refrain from contracting with, joining, or maintaining his membership in an association or to refuse to deal with a producer because of the exercise of his right to contract with, join, or maintain his membership in an association.

(2) To discriminate against a producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural

products because of his membership in or his contract with an association.

(3) To coerce or intimidate a producer to breach, cancel, or terminate a membership agreement or marketing contract with an association or a contract with a handler.

(4) To offer to pay or loan money or anything of value, or to offer or give any other inducement or reward to a producer for refusing to join or to cease to maintain membership in an association.

(5) To make or circulate false reports about the finances, management, or activities of an association or a handler.

(6) To refuse to bargain in good faith with an association accredited to represent producers, if the handler is designated pursuant to section 6.

(7) To conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act.

(b) It shall be unlawful for any association to engage or to permit an employee or agent to engage in any of the following practices, which are hereby defined as unfair practices:

(1) To refuse to bargain in good faith with a handler designated pursuant to section 6.

(2) To coerce or intimidate a handler to breach, cancel, or terminate a marketing contract with an association or a contract with a member of an association.

(3) To make or circulate false reports about the finances, management, or activities of an association or a handler.

(4) To coerce or intimidate a producer to breach, cancel, or terminate a membership agreement or marketing contract with an association.

(5) To conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act.

BARGAINING IN GOOD FAITH

SEC. 5. (a) "Bargaining" is the performance of the mutual obligation of a handler and an accredited association to meet at reasonable times and for reasonable periods of time for the purpose of negotiating in good faith with respect to the price, terms of sale, compensation for products produced under contract, or other provisions relating to the products that are marketed by the members of such accredited association or by the association as their agent. Such obligation on the part of any handler shall extend only to accredited associations and the products with respect to which such associations are accredited to bargain. Such obligation does not require either party to agree to a proposal or to make a concession.

(b) If a handler purchases a product from other producers under terms more favorable to such producers than the terms negotiated with an accredited association for such product, he shall offer the same terms to the accredited associations. In comparing such terms, there shall be taken into consideration, in addition to the stipulated purchase price and without limiting the generality of the foregoing, any bonuses, premiums, hauling or loading allowances, reimbursement of expenses, or payment for special services of any character which may be paid by the handler, and any sums paid or agreed to be paid by the handler for any other designated purpose than payment of the purchase price.

ACCREDITATION OF ASSOCIATIONS OF PRODUCERS

SEC. 6. (a) An association seeking accreditation to bargain for producers of an agricultural product or products shall submit to the Secretary a petition for accreditation. The petition shall: (1) specify the agricultural product or products for the producers of which the association seeks accreditation to bargain; (2) designate the handlers, individually or by production or marketing area or by some other appropriate classification, with whom the association shall be accredited to bargain; and (3) contain such other information and documents as may be required by the Secretary.

(b)(1) Upon receiving the petition and any supporting material, the Secretary shall give notice of the petition to all designated handlers. Handlers who have been designated individually shall receive personal notice; handlers who have been designated by production or marketing area or by some other general classification shall be given notice through the Federal Register. Both the association seeking accreditation and the designated handlers shall have an opportunity to submit written evidence, views, and arguments to the Secretary, who may in his discretion conduct an informal proceeding. The Secretary shall hold a formal hearing for the reception of testimony and evidence only if he finds that there are substantial unresolved issues of material fact.

(2) The Secretary shall accredit such association if, based upon the evidence submitted, the Secretary finds—

(A) that under the charter documents or bylaws of the association, it is owned and controlled by producers;

(B) that the association has contracts with its members empowering the association to sell or negotiate terms of sale of the products of its members that are binding under State law;

(C) that the association represents a sufficient number of producers or that its members produce a sufficient quantity of agricultural products to enable it to function as an effective agent for producers in bargaining with the designated handlers. In making this finding, the Secretary shall exclude any quantity of the agricultural products contracted by producers with producer owned and controlled processing cooperatives and any quantity of such products produced by handlers; and

(D) that the association has as one of its functions acting as principal or agent for its members in negotiations with handlers for prices and other terms of trade with respect to the production, sale, and marketing of their products.

(c) The Secretary shall give notice of his decision to the petitioning association and to the designated handlers, together with a concise statement of his reasons. The Secretary shall also give notice of any accreditation to all other associations that have been accredited to bargain with respect to the product or products with any of the designated handlers.

(d) Each accredited association shall submit an annual report to the Secretary in such form and including such information as the Secretary by regulation may require so as to enable him to determine whether the association continues to meet the standards for accreditation.

(e) If the Secretary believes that an accredited association has ceased to meet the standards for accreditation set forth in paragraph (b) of this section he shall notify the association of the respects in which he believes it has ceased to maintain such standards and allow it a reasonable time to answer or to correct the deficiencies noted. Thereafter, if the Secretary is not satisfied that the association is then in compliance with paragraph (b) of this section, he shall notify the association and hold a hearing to consider the revocation of accreditation. If, based upon the evidence submitted at the hearing, the Secretary finds that the association has ceased to maintain the standards for accreditation, he shall revoke the accreditation of such association.

(f) The Secretary may, upon his own motion or the petition of an accredited association or a designated handler, amend his order of accreditation with respect to the product or products specified therein. The Secretary shall give notice of any proposed amendment and the reasons therefor to all accredited associations and handlers that would be directly affected thereby and shall provide an opportunity for a public hearing. Thereafter, the Secretary may amend the order if he finds such amendment will be conducive to more effective bargaining and orderly marketing by the accredited association of the product or products of its members.

ASSIGNMENT OF ASSOCIATION DUES, FEES, OR RETAINS

SEC. 7. If a producer of a farm product voluntarily executes, either as a clause in a sales contract or other instrument in writing, an assignment of dues or fees to or the deduction of a sum to be retained by an association authorized by contract to represent such producer, by which the handler is directed to deduct a sum from the amount to be paid for such product, or for the services of such producer under a growing contract, and on behalf of the producer to pay the same over to such association as dues or fees or funds to be retained by the association, and causes notice of such assignment to be delivered to a handler, then such handler shall deduct the amount authorized from the amount paid for any farm product being sold by any such producer or for any services under any growing contract and, upon payment to producers for such farm product or services, pay said amount over to the association or its assignee.

MEDIATION AND ARBITRATION

SEC. 8. The Secretary may provide mediation services if requested either by an accredited association or by a designated handler engaged in bargaining with an accredited association and if, in the Secretary's judgment, an impasse in bargaining has occurred. The Secretary shall provide assistance in proposing and implementing arbitration agreements between accredited associations and designated handlers. The

Secretary may establish a procedure for compulsory and binding arbitration if he finds that an impasse in bargaining exists and such impasse will result in a serious interruption in the flow of product to consumers or will cause substantial economic hardship to producers or handlers involved in the bargaining.

ADMINISTRATION

SEC. 9. (a)(1) Whenever it is charged that an accredited association or handler has violated or is violating section 4 (a)(6) or (b)(1) of this title, the Secretary shall issue and cause to be served upon the person charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the Secretary at the time and place therein fixed.

(2) Whenever it is charged that an association or handler has violated or is violating any other provision of this title, the Secretary shall investigate such charges. If, upon such investigation, the Secretary has reasonable cause to believe that the person charged has violated such provision, he shall issue and cause to be served upon the person so charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the Secretary at the time and place therein fixed.

(b) The person complained of shall have the right to file an anwer to the original and any amended complaint and to appear in person or otherwise and give testimony. The person who filed the charge shall also have the right to appear in person or otherwise and give testimony.

(c) If, upon a preponderance of the evidence, the Secretary is of the opinion that the person complained of has violated any provision of this title, he shall state his findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violation and shall order such further affirmative action, including an award of damages to the person filing the charge, as will effectuate the policies of this title.

(d) The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

INDEPENDENT ENFORCEMENT AUTHORITY

SEC. 10. The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter for which a charge is authorized to be made to or before the Secretary by section 9 of this title. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though a charge had been filed with him, including the power to make and enforce any order.

JUDICIAL REVIEW

SEC. 11. (a) Any person aggrieved by a final order of the Secretary issued under section 9 of this Act or under section 6(b)(2), 6(e), or 6(f) of this Act, may obtain review of such order in the United States Court of Appeals for the District of Columbia Circuit by submitting to such court within thirty days from the date of such order a written petition praying that such order be modified or set aside.

(b) The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record, shall be conclusive.

(c) Orders of the Secretary with respect to which review could have been obtained under paragraph (a) of this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(d) If no petition for review, as provided in paragraph (a) of this section, is filed within thirty days after service of the Secretary's order, the Secretary's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such thirty-day period. In any such case, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the person named in the complaint.

(e) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

FEDERAL ENFORCEMENT

SEC. 12. (a) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of section 4 of this title or in violation of any order of the Secretary, he shall bring a civil action in accordance with paragraph (b) of this section.

(b) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

(c) Any person who violates section 4 of this title or any order of the Secretary issued under section 9 or 10 of this title shall be subject to a civil penalty not to exceed $500 per day of such violation.

(d) Any person who wilfully violates section 4 of this title, or any order of the Secretary under section 9 or 10 of this title, shall be punished by a fine of not less than $500 nor more than $1,000 per day of such violation or by imprisonment for not more than one year, or both.

CIVIL REMEDIES

SEC. 13. (a) Except as provided in paragraph (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person who is alleged to be in violation of section 4 of this title or of any order issued by the Secretary under section 9 or 10 of this title; or

(2) against the Secretary when there is alleged a failure of the Secretary to perform any act or duty under this title which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such section or order (including the issuance of a permanent or temporary injunction or restraining order), or to order the Secretary to perform such act or duty as the case may be, and to apply any appropriate civil penalties under section 12 of this title.

(b) No action may be commenced—

(1) under paragraph (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation to the Secretary and to the alleged violator, or

(B) if the Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States to require compliance with such section or order, but in any such action any person may intervene as a matter of right;

(2) under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Secretary.

(c) Any person aggrieved by reason of any violation of, or combination or conspiracy to violate any provision of section 4 of this Act may bring an action in the appropriate district court of the United States without respect to the amount of the controversy, and shall recover damages therefor. Any action to enforce any cause of action under this subsection shall be forever barred unless commenced within two years after the cause of action arose.

(d) The court, in issuing any final order in any action brought pursuant to paragraph (a) or (c) of this section, may award costs of litigation (including reasonable attorney fees) to any party, whenever the court determines such award is appropriate.

(e) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law, except as provided in paragraph (b) of this section.

INVESTIGATIVE POWERS OF SECRETARY

SEC. 14. (a) Whenever required to carry out the objectives of this title, including the conduct of any investigations or hearings—

(1) the Secretary shall require any person to (i) establish and maintain such records, (ii) make such reports, and (iii) provide such other information as he may reasonably require; and

(2) the Secretary or his authorized representative, upon presentation of his credentials and a warrant or

such other order of a court as may be required by the Constitution—

(i) shall have a right of entry to, upon, or through any premises in which records required to be maintained under paragraph (a)(1) of this section are located, and

(ii) may at reasonable times have access to any copy any records, which any person is required to maintain or which relate to any matter under investigation or in question.

(b) Any records, reports, or information obtained under this section shall be available to the public except that upon a showing satisfactory to the Secretary that such records, reports, or information, if made public, would divulge confidential business information, the Secretary shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title or when relevant in any proceeding under this title.

(c)(1) In making inspections and investigations under this title, the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath.

(2) The Secretary, upon application of any party to a hearing held under section 9 or 10 of this title, shall forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of evidence requested in such application. Within five days after the service of a subpena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Secretary to revoke such subpena. The Secretary shall revoke such subpena if in his opinion the evidence whose production is required does not relate to any matter in question, or if such subpena does not describe with sufficient particularity the evidence whose production is required.

(d) The Secretary, or any officer or employee designated by him for such purpose, shall have power to administer oaths, sign and issue subpenas, examine witnesses, and receive evidence. Witnesses shall be paid the same fees and mileage allowance as are paid witnesses in the courts of the United States.

(e) In the case of any failure or refusal of any person to obey a subpena or order of the Secretary under this section, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found or resides or transacts business, upon the application by the Secretary shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as and when so ordered to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

STATE AUTHORITY

SEC. 15. This Act shall not invalidate the provisions of any existing State legislation dealing with the same subjects as this Act, nor shall this Act prevent any State from enacting legislation similar to existing State legislation, except that such similar legislation may not permit any action that is prohibited under this title.

SEPARABILITY OF PROVISIONS

SEC. 16. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

REPEAL OF AGRICULTURAL FAIR PRACTICES ACT OF 1967

SEC. 17. The Agricultural Fair Practices Act of 1967 (Public Law 90-288, 7 U.S.C.A. 2301 et seq.) is hereby repealed effective on the day after the date of enactment of this title: *Provided, however*, That such repeal shall not affect any act done or any right accruing or accrued, or any act or

proceeding had or commenced in any civil cause, before such repeal.

O

OPENING REMARKS OF HON. LEON E. PANETTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. PANETTA. Today marks the first day of consideration by the 96th Congress of the National Agricultural Bargaining Act of 1979. It is significant that this measure, which has come before other Congresses and other forums on numerous occasions in the last two decades is now being considered by this Congress, the Congress that hopefully is bent on correcting injustices and in helping to insure that all people who work hard and contribute to society can share in its abundance.

Perhaps the hardest working, and certainly the most independent individuals in our Nation are our farmers who toil long and hard hours for what, in many cases, is precious little reward.

Over the years, Congress has attempted to help the farmers compete for better prices against large middlemen who, by virtue of their size and control over the market, have effectively kept the farm profits at a bare minimum.

The Agricultural Bargaining Act, which is endorsed by the American Farm Bureau, the Grange, the Farmers Union, and the National Council of Farmer Cooperatives, is designed to strengthen the farmers' bargaining power in today's marketplace by establishing fair practice standards for both producer associations and handlers of agricultural products. The bill will allow farmers to enhance their position in the market in which presently they are at a serious competitive disadvantage.

Over the last few years, the market structure of American agriculture has become concentrated in the hands of fewer, larger,and more specialized agribusiness operations. Large processors and agents are consequently able to dictate product supply, the time and conditions for delivery, product quality and appearance, and most important, price that a farmer receives for his product.

To cope with this noncompetitive situation, farmers have often formed bargaining associations. But there is no requirement that processors or handlers have to engage in good faith bargaining with these associations. Indeed, there are examples where some farmers have been virtually penalized in the bargaining process because they belong to such associations.

The bill before us provides a basis for good faith bargaining between the farmer and the processor. Both are essential to each other in the agricultural system. Both must be fair with one another if the system is to survive.

The purpose of today's hearing is to examine the possibility of taking the step toward farmer equality in the marketplace by establishing a mechanism for agricultural bargaining. The bargaining associations that have been formed, and those that have attempted to be formed over the years, now need legislative sanction to guarantee that processors and other handlers will respond to farmers' needs in a fair and equitable manner.

I welcome those that have come a long distance to be with us today. I assure each of you that your comments and conerns will be fully considered in the course of debating and considering this legislation. Mr. Glickman.

OPENING REMARKS OF HON. DAN GLICKMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. **Glickman**. I will have to leave soon, Mr. Chairman, so I would like to make a very short comment.

I commend the chairman for calling these hearings. I know this is a very controversial piece of legislation. I think the number of people in the audience will testify to this fact.

I also know that it is a very, very significant piece of legislation in that it would dramatically change and alter existing methods of determining prices for a lot of farm commodities.

I would hope that in the testimony that those who are proponents of this legislation would state their case as to why they believe this would, in practical effects, constitute an improvement in the pricing mechanism over the existing law.

We need to know whether or not this constitutes an invasion of the marketplace which could not be remedied in some other fashion. I do not know the answer to that question, but I think it is an important one.

The second question is this. I am wondering whether this legislation is more appropriate to fruit and vegetable farmers and not appropriate whatsoever to crops which are not perishable and which rely, to a large extent, on the export market to determine their pricing. Of course, I am talking mostly about grains and certainly about livestock.

Those are among the questions that I hope, Mr. Chairman, that the witnesses can address today, among the other things that they will be talking about.

Mr. **Panetta**. I thank the gentleman.

We will proceed with our first panel. We have John Scott, president, the National Grange; John Datt, secretary, American Farm Bureau Federation; Tony Dechant, president, National Farmers Union; and Ken Naden, president, National Council of Farmer Cooperatives.

Gentlemen, we welcome you.

This is a distinguished panel that we have before this subcommittee. I think this is one of the few times that all of the national organizations representing farmers have come together in a single panel such as this.

You may proceed as you wish.

[The statements of the above panel follow:]

STATEMENT OF JOHN W. SCOTT, MASTER, THE NATIONAL GRANGE

Mr. Chairman and Members of the Committee:

I am John W. Scott, Master of the National Grange, with offices at 1616 H Street, N. W., Washington, D. C.

The National Grange is the oldest farm organization in the nation, organized in 1867, following the War Between the States. Today the National Grange represents 500,000 members in 41 states and 6000 local communities. Our membership cuts across the residents of rural and suburban America, embracing small to medium-size family farmers, rural businesspeople who depend upon an economically strong family agriculture, and residents of rural areas who have not only a basic inherent interest in agriculture, but who have a financial interest in the economic success and stability of farmers.

Mr. Chairman, I appreciate the opportunity to be the first witness at hearings that will result in the enactment of legislation that will assist producers in having greater control over their destiny, specifically as it relates to the return they receive for their inputs of capital, labor and management. The Grange thanks you for holding early hearings on this important "history-making" legislation and looks forward to working with you and the committee staff in any improvements that may come to light as these hearings progress. I also want to thank Rep. Panetta for sponsoring H.R. 3535 and the other Representatives who have agreed to co-sponsor the National Agricultural Bargaining Act of 1979. The National Grange appreciates your interest in furthering the rights of the producers of the nation's food and fiber to organize into effective bargaining units.

I also am honored and pleased that my colleagues from the American Farm Bureau Federation, the National Farmers Union and the National Council of Farmer Cooperatives have allowed me to be the lead witness on legislation that we all have had a part in developing. It's been some time in the history of agricultural legislation -- in fact, this may be a first -- that the leaders of three major farm organizations and the National Council have sat at this table in support of farm legislation. I am glad to see that they have, at last, come around to seeing the Grange position.

It's been said that when two people agree that it's because one is doing all the thinking. That is not the case here this morning. Representatives from the four organizations at this table have played a major role in developing the bill introduced by Rep. Panetta. Our organizations were assisted by representatives of major bargaining associations and their input and experience were invaluable.

The National Grange has a long history of support and involvement in the co-op movement in American agriculture. We have been interested in the problem of farm organization for the purpose of increasing farm income for over a century. The objectives of the Grange were set forth on this issue in our Declaration of Purposes, adopted in 1874 at the National Grange Session in St. Louis:

> "We propose meeting together, talking together, working together, selling together, and, in general, acting together for our mutual protection and advancement, as occasion may require."

In 1875, the Grange authorized the sending of a member to study the cooperative movement, and especially the Rochdale cooperatives in England. The 1876 Session of the National Grange was almost completely devoted to cooperatives, and historically was the beginning of the Cooperative Movement in America which the Grange spearheaded and developed for over a half-century.

With the passage of the Robinson-Patman Act, the Grange was convinced that its ownership of cooperatives was not compatible with the laws we had helped to pass and we gradually phased them out with few exceptions. Whether this was good business sense or not is perhaps debatable, but the point which we wish to make at the present time is that we have not lost our interest in cooperatives, nor in associations of cooperatives or bargaining associations which exist for the purpose of improving farm income.

Indeed, the record will show that we have been a consistent supporter of all cooperative efforts --if not specific legislation-- sponsored by the National Council of Farmer Cooperatives or by the National Rural Electric Cooperative Association, and those which were more independent in nature.

Basic to the Grange's support for increased bargaining power for farmers is our affirmed national policy of increased income for those who gain their rewards from tilling the soil. We feel that progress has been made, but still the average American farmer lags far behind other segments of the economy in earned net income. In addition, farmers and other residents of rural America have been denied many of the social improvements that other segments of the economy have come to take for granted. This inequity must be removed if America's number one industry is to remain economically strong--and it must share equally economic returns in comparison to the investment of capital, labor and management if agriculture is to continue to supply an abundance of food and fiber to meet the needs of a growing nation and world.

In Joseph G. Knapp's book "The Rise of American Cooperative Enterprise" he gives an excellent analysis of Grange cooperative policy and achievement, and I quote:

"The Grange contributed materially to the growing cooperative movement. While the total extent of the cooperative business done through the Grange or its agencies was not impressive, the training in cooperative thinking and methods given by the Grange did much to provide leadership for the new cooperative forces. Of particular importance was the policy followed by the Grange in aligning itself with other groups to achieve cooperative objectives that could not be encompassed by the Grange alone. The Grange not only encouraged its members to participate in the formation and operation of strong cooperative organizations independent of the Grange, but even welcomed the coming of another general farm organization--the American Farm Bureau--as a necessary business organization for agriculture."

To facilitate the formation of strong cooperative associations the Grange's Cooperation Committee in 1920 moreover recommended "the passage by Congress of legislation guaranteeing the right of collective bargaining and cooperative marketing of farm products" and urged the "passage of comprehensive, cooperative legislation by the federal government and uniform cooperative laws by the states." It also declared: "Plans must be made for the proper short-time financing of the farmer during the movement of grain and food products, permitting their marketing in an orderly manner as the market demands."

I would like to make one point perfectly clear: the Grange does not view any bargaining legislation as a substitute for any existing agricultural legislation. Bargaining, to be even remotely successful, must have a degree of "supply control". Past farm programs and the present Act have production control features that can serve as a "bargaining base". In addition, commodity loan programs, acreage allotment and marketing quotas, on-farm storage provisions, acreage diversion and conservation programs, producer payments, Federal marketing orders and agreements, and the reseal programs--all of these are the start of increased bargaining power for farmers and must be retained. All of these programs and tools have been and are elements of market power for farmers. The Grange, for one, will not exchange these programs for the removal of the opposition to the pending bargaining legislation.

I am pleased today to appear before this subcommittee of the 96th Congress and add to our 104-year history of support for agricultural cooperative marketing and bargaining.

The "National Agricultural Bargaining Act of 1979" has been in the making for over two years. In fact, the ground work for this vital tool towards effective farm marketing has its roots in the Agricultural Fair Practices Act of 1967 and subsequent bargaining legislation introduced by Rep. Bernie Sisk of California and then Senator Walter Mondale of Minnesota in the early '70s.

The legislative history of these two efforts to increase farmers' bargaining power makes it clear that the community was not united in their thinking on bargaining legislation, let alone their representatives in Congress.

The National Grange, I find, was all over the lot in its position on S. 109, changing as the various versions came before the Committees. In the end, the Grange opposed S. 109 because it did not meet the policy objectives of the Grange. I am afraid our position at that time was more philosophical than legislative. I was not with the Grange at that time but in reading the testimony we seemed more concerned with the intent of other farm organizations than with our own position. Today we join with others to benefit producers and not to enhance our own organization.

When we went through the last attempt to pass national bargaining legislation--early in the '70s--the Grange, while maintaining our general support for marketing and bargaining legislation, did not support any of the bills as introduced. I don't believe any purpose would be served by reviewing our objections to the Sisk and Mondale bills. The importance of the above is that the main points we objected to in 1971 are not in the legislation as introduced in the 96th Congress.

It is important to remember that the reason bargaining legislation has not been taken seriously by Congress since 1971 is because of the lack of unity among the general farm organizations and the various commodity groups. Today we have that unity and hope our Representatives in Congress will join us in adding another milestone to the history of cooperative marketing by passing H.R. 3535.

One of the primary concerns of the National Grange is the preservation of the family farm structure in American agriculture. I am not speaking of the large corporate family farms,but those farmers in the lower economic classification of the agricultural structure. In our judgment cooperative marketing and bargaining holds out the greatest hope for their survival as a viable economic unit in American agriculture.

The changing structure of farm marketing, vertical integration and the demise of the open market to establish price sets forth the primary function of a bargaining association -- that of providing a forum for the setting of price and other terms of sale. With the continued demise of the open market, family farms will also continue to decline unless legislation is passed to enhance the success of effective bargaining associations.

The right of farm people to organize, to be recognized, and to negotiate with a handler, rests, in my judgment, on a fundamental principle of equity: that the bargaining power of the two negotiating parties should be approximately equal. Without an association, a farmer selling to a food processor has almost no bargaining power.

Reliant as he is on his skills and equipment, and committed as he is to a particular cropping pattern, he is vitally dependent on getting a contract for his tomatoes or his apples or his grapes. But the processor, with a large number of suppliers from whom he can buy, has very little need to close a contract with any particular farmer. He can play off one farmer against another. A contract between an individual farmer and a large processing firm is therefore an arrangement between a weak party and a strong party, with all the inequities latent therein. The processor can hurt the individual farmer but the individual farmer cannot hurt the processor.

If, however, the farmers organize into an association, they can bargain with a food processor on equal terms. Each party knows it can be hurt by the other, and from this knowledge there should logically come a desire to avoid giving offense.

We can't expect handlers of farm products to relinquish, willingly, a bargaining power advantage they long have enjoyed. Few people readily agree to a loss of power, whatever the equity considerations may be.

Here, I wish to make a major point, with all the clarity possible, so that I will not be misunderstood. Just as it is offensive to have market power unbalanced to the detriment of one party, so it is wrong to have an imbalance detrimental to the other. The public interest may be injured by the concentration of economic power in the hands of either party. It is for this reason that the law and the courts prescribe what can and cannot be done through bargaining associations and through farmer cooperatives.

Most citizens of the United States probably favor the general proposition that bargaining power should be approximately equal on the two sides of the negotiating table. Groups of people whose bargaining power is weak thus generally have public opinion in their favor -- up to a point.

The enactment of H.R. 3535, in our judgment, will equalize the bargaining power between supplier and processor to the benefit of the general economy.

The enactment into law of the proposed bargaining legislation can go a long way in providing the bargaining climate that will lead to a higher percentage of successes but it will not guarantee success. The disciplines within the bargaining group perhaps are more important to that success than any law.

I know that some of the strong support bargaining legislation had in the early '70s from special interests has dissipated. Some believe that the time for bargaining legislation has come and gone. If this is true--and I don't believe it has--at least not for the smaller family farmers who find it difficult, if not impossible, to find a market and effectively bargain for price, then we in the general farm organizations have only ourselves to blame. We at times have put our own selfish membership interests above the interests of our member producers to the benefit of no one except the processor or handler who has benefited by our disunity.

But that is in the past. I believe the unity of effort displayed today is an indication that the four organizations represented on this panel are fully dedicated to the enactment of H.R. 3535 for the betterment and preservation of the family farm structure in American agriculture. It is our sincere hope that other producer groups will join with us in this spirit of unity.

Thank you, Mr. Chairman.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION BEFORE THE SUBCOMMITTEE ON DOMESTIC MARKETING OF THE HOUSE COMMITTEE ON AGRICULTURE WITH REGARD TO THE NATIONAL AGRICULTURAL BARGAINING ACT OF 1979

Presented by
JOHN DATT, SECRETARY

July 10, 1979

I am extremely pleased to be able to appear before this Subcommittee to present a statement in support of a proposal to assure fair practices in bargaining negotiations between farmers and ranchers and the processors and handlers of agricultural products. This proposal is a self-help tool for improving farm income without excessive or burdensome government involvement.

I am pleased to be here with the leaders of three other major farm groups. This joint effort indicates our common interest in finding solutions to the problems faced by our farmer members.

It should come as no surprise to this Subcommittee that the National Agricultural Bargaining Act of 1979 does not include any new goals. Farmers and ranchers have continuously sought legal means through which they could enhance their incomes and their standard of living.

Attempts to bolster farm income have ranged from placing the burden for strengthening farm prices on the Federal Treasury, through the passage of the Agricultural Adjustment Act of 1933 and a long series of related laws, to the enactment of the Capper-Volstead Act in 1922 and subsequent efforts to strengthen and clarify Congressional support for farmer cooperatives. We believe that each of these laws fulfilled a need at a given point in history.

As time has elapsed some of the laws have been amended or modified to meet the ever-changing needs of agriculture. Others have been found to be inadequate. This is the reason we appear before you today.

Before we can describe the injustices that exist and the need for legislative relief, we need to briefly define the situation which this legislation is designed to remedy.

Many farmers and ranchers produce commodities under contract arrangements with processing firms or handlers through which their products are marketed. The commodities produced under contract now include, but are not limited to, processing fruits and vegetables, turkeys and broilers, popcorn and milk. Although other major cash crops and livestock are not contracted on as large a scale, future changes in the marketing systems for such commodities could lead producers to opt to utilize the voluntary provisions of this bill.

Production of forward contract crops usually requires large fixed investments in highly specialized equipment or, in the case of many fruit producers, a long-term commitment of their land to the crop. Most farmers have access to a very few processors - sometimes only one or two; and most forward contracts are developed by a processor or handler and offered unilaterally to farmers.

Most processors are better capitalized than the growers and have plants situated in different production areas; so they are not constrained by growing conditions or producer resistance in any one geographic area.

These conditions have completely frustrated individual producer efforts to improve prices and other terms and conditions of sale.

The frustrations of thousands of contract growers naturally led to the need for cooperative efforts to develop some degree of strength in order to bargain and negotiate effectively with processors and handlers.

In 1960 the American Farm Bureau Federation organized an affiliated marketing organization, the American Agricultural Marketing Association, through which Farm Bureau members in more than 30 states with similar affiliates have been working to improve the terms and conditions of their contracts with processing companies.

This effort has been both expensive and of limited effectiveness. Prior to the enactment of the Agricultural Fair Practices Act of 1967, many farmer bargaining co-ops found their efforts to advance the interests of their grower members circumvented and undermined by tactics such as processor offers of "sweetheart" contracts to nonassociation growers.

The passage of the Agricultural Fair Practices Act of 1967 provided remedies for this practice and some other unfair trade practices by processors which had impaired or destroyed the efforts of Farm Bureau associations and other producer groups to improve grower contracts. However, the Agricultural Fair Practices Act of 1967 has not provided farmer cooperatives the clear authority and protection they need in order to become equal participants in negotiations with processors.

This has led to the development of the proposed National Agricultural Bargaining Act of 1979, H.R. 3535, which is supported by the four farm organizations represented here today.

We are extremely pleased that Congressman Panetta has sponsored the bill and has been joined by an increasing number of his colleagues from both sides of the aisle.

The proposed National Agricultural Bargaining Act of 1979 contains four major proposals.

First, the bill requires that the Secretary of Agriculture establish a system for accrediting voluntary membership producer associations upon petition by the growers of a commodity who seek to bargain with a handler under the provisions of the proposed law.

It is important to point out that nothing happens as a result of passage of this bill until the growers of a commodity voluntarily initiate a petition for accreditation. Then, only those growers who are members of the association(s) accredited would be affected by the law. This provision is different from that contained in other proposals and some state laws which allow only one association to bargain for the entire crop in the state once that association has enlisted a majority of the growers as members.

We believe that this accreditation procedure will ensure that grower associations will have access to processors. At the same time it will prevent processors from being harassed by insignificant or possibly unreliable associations.

An equally important provision of this bill is the good faith bargaining provision. This provision specifically makes good faith bargaining the mutual obligation of both parties and provides for recourse if this obligation is not fulfilled. This section of the bill specifically states that the parties are not required to reach agreement; however the Secretary could prescribe mediation and/or arbitration under certain circumstances.

This provision will ensure that meaningful dialogue will occur between an accredited association and the processor(s) with whom the association has been accredited to bargain.

The third major provision of this bill restates and expands the Agricultural Fair Practices Act of 1967. This provision is intended to ensure that all parties will conduct themselves in a consistent and open manner, free of undue and unfair pressure or intimidation.

The fourth major provision authorizes certain enforcement procedures. We believe that adequate enforcement is essential to effective agricultural bargaining legislation.

Mr. Chairman, in conclusion, we expect this bill to be controversial. We naturally expect processing companies and their trade associations to work at preventing farmers from having a more equitable opportunity to negotiate more favorable contract terms.

We do not, however, believe that consumers will have any reason to oppose this bill since only 39 percent of the retail food dollar is attributable to the wholesale cost of raw agricultural products.

We are pleased to find so many farm leaders and organizations committed to the goal of helping farmers to help themselves with a minimal involvement of the Federal Treasury and other parts of the Executive Branch of Government.

We know that some commodity groups may not see the benefits of this type of legislation for their members at this time. But we believe that the time will come when these commodity interests may find this type of legislative protection quite useful. No commodity is affected by this legislation unless and until its producers voluntarily seek to have an association accredited under the Act.

Finally, I want to reiterate that this legislation is a self-help tool and there are thousands of farmers who need this type of protection.

We believe that enactment of this bill will improve the bargaining power of farmers and ranchers and will help to ensure survival of the family farm system as we know it. At the same time, we will preserve the best system that is to be found anywhere in the world for the production of an abundant, nutritious supply of food.

We strongly feel that enactment of the National Agricultural Bargaining Act will be good for farmers, for processors and for consumers.

The Farm Bureau appreciates this opportunity to appear before this Subcommittee on this important piece of legislation for America's farmers and ranchers.

National
Farmers Union

Statement of

Tony T. Dechant
President of the National Farmers Union

In Support of
H.R. 3535, The "National Agricultural
Bargaining Act of 1979"

Submitted to the
Subcommittee on Domestic Marketing, Consumer Relations
and Nutrition of the
Committee on Agriculture

U. S. House of Representatives
Washington, D. C.

July 10, 1979

Mr. Chairman and Members of the Subcommittee:

I am Tony T. Dechant, President of the National Farmers Union. I am honored to appear here today with the leaders of three other major farm and farm cooperative associations of the United States to speak in support of H.R. 3535, the "National Agricultural Bargaining Act of 1979".

Farmers Seek Equity

The National Farmers Union has for many years supported legislation to give farmers a right enjoyed by millions of other Americans -- the right to bargain collectively to set the terms of sale and the prices paid for the fruits of their labor. Over 20 million working men and women in the United States today bargain collectively through labor unions. Their right to do so is legally recognized and protected by the National Labor Relations Act, commonly known as the "Wagner Act". In the late 1940's, NFU began to talk about a "Wagner Act" for agriculture. In 1968, the National Farmers Union sought legislation to guarantee farmers the right to bargain collectively with processors, handlers and other "middlemen". Vice President Walter Mondale and Secretary of Agriculture Bob Bergland were the chief sponsors of comprehensive bills for this purpose in the Congress early in this decade.

Equity is the central objective of this legislation. The current practice of price negotiation between farmers and food processors is unequal and inherently unfair. Each processor buys raw agricultural

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products from many individual farmers. The processor has more purchasing opportunities than opportunities available to any one farmer to sell his products. The financial resources of the processor are also superior to those of the farmer. Finally, the farmer is often negotiating at harvest time when he has a large investment in a perishable crop which he must sell or allow to spoil. All of these conditions weight the negotiations heavily on the side of the processor. Farmers lack market power. Farmers must be accorded equity with those to whom they sell their products.

I wish to emphasize at the outset that we do consider collective bargaining to be a supplement rather than a substitute for existing agricultural statutes concerning commodity credit, conservation, extension, research and other programs essential and fundamental to the economic welfare of farmers. These programs, as we view them, are simply a foundation from which to move to further improve the economic tools of farmers as we seek greater equity in marketing.

Former Efforts Toward Equity

As we renew our efforts to seek equity for farmers in the marketplace, it is useful to review the history of farmers' efforts to improve their marketing conditions. Efforts to improve farmers' market power are not new to the National Farmers Union or to national farm legislation.

The National Farmers Union has sought to improve the economic position of American farmers through improve market performance since its founding in 1902. Some of the developments for which we have fought and worked successfully toward this end include:

* Organization of local and regional marketing cooperatives;

* Legal sanction of cooperative marketing activities under the Capper-Volstead Act;

* Gaining access for cooperatives to the terminal markets and commodity exchanges;

* Creation of federal marketing orders; and

* Establishment of public funding for the storage of food reserves, acreage reduction programs, encouragement of on-farm storage, and other programs to reduce or eliminate periodic surpluses that depress market prices and reduce the market power of farmers.

The members of the National Farmers Union have long supported the right of farmers to bargain collectively. This support was most recently expressed by the delegates to our national convention held in Kansas City, Missouri in March of this year. In addition, the delegates to the National Farmers Union Convention of 1978 established a special research committee to study marketing and bargaining associations along with other marketing alternatives. The National Farmers Union Marketing Research Committee submitted its findings and recommendations to the delegates at this year's national convention. At this time, Mr. Chairman, I would like to submit for the record "Exhibit I", which is a copy of the section of the 1979 policy of the National Farmers Union pertaining to domestic marketing policies, and "Exhibit II", which contains the findings and recommendations of the National Farmers Union Marketing Research Committee on marketing and bargaining associations.

When a farmer does not have to sell in a distressed market burdened by surpluses, he has gained a measure of market power. When a farmer may negotiate fairly the conditions under which his products will be sold and the price that will be paid for them before his resources and his labor have been irrevocably committed, then too he has gained market power. When a farmer knows that a fair and enforceable minimum price has been established for his product, he has gained a third type of market power. All of these mechanisms provide the incentive and stabilizing conditions necessary for a farmer to make the commitments required to produce and harvest a crop.

Congress has passed several laws over the years to establish marketing procedures and conditions that enable farmers to market, more effectively. Among these are:

- The Capper-Volstead Act of 1922, which established the right of farmers to organize cooperatives to establish storage and transportation facilities and to perform for themselves other marketing services;

Farmers Union's first president, Charles Barrett, led an eight-year effort to get this statute adopted.

- The Agricultural Adjustment Act of 1933, which established legal authority for a number of federal programs to manage surplus supplies of farm products; and
- The Agricultural Marketing Agreements Act of 1937, which established the right of producers of certain commodities to adopt marketing orders to regulate the flow of product to the market and to establish grades and standards; and in the case of milk, to establish minimum prices and provide for payment of uniform prices to all producers in a market.

An important failing of most federal statutes pertaining to the marketing of agricultural products is that they apply only to specific products or groups of products. While it may be true that one type of marketing or supply management procedure is better suited to a given commodity than are others, the producers of each commodity should be the ones to decide which mechanism to use. For example, we expect on the basis of experience that the bargaining procedure proposed in H.R. 3535 will be used most commonly to sell products grown or raised on forward contracts. Under current practices, these would include primarily fruits and vegetables grown for canning or other processing and poultry products. However, farmers raising other types of crops or livestock should not be precluded from using the procedures contained in the bill to negotiate forward contracts for the sale of their products, nor should the farmers who raise processing fruits and vegetables or poultry be precluded from using other marketing and supply management tools such as marketing orders or government-assisted storage.

Farmers have used all of the mechanisms cited above to improve their market power, but legislation to establish a clear legal sanction for farmers to bargain collectively in the marketplace has eluded us.

Some will argue that existing statutes, taken as a whole, give farmers all of the legal authority they need to bargain effectively. That is unfortunately not true. The recent attack on the Capper-Volstead Act by the President's Commission to Review Antitrust Laws and Procedures has demonstrated with startling clarity that many of those with responsibility for protecting the public from absues of excessive market domination by a few large concerns have little understanding of the special conditions of farmers or their cooperatives. Farmers often must sell in a market where there are few buyers and few alternatives. Existing statutes have improved marketing conditions for farmers, but the development of enabling legislation for effective and direct bargaining with handlers on prices has not yet been satisfactorily achieved on a broad base. Legislation is needed to establish beyond question that farmers have the right to bargain collectively, and that handlers are obligated to bargain in good faith with farmers' associations.

H.R. 3535 Establishes Negotiating Framework

The National Agricultural Bargaining Act of 1979, H.R. 3535, is such a bill. I wish to stress that this bill would establish a legal framework in which collective bargaining between farmers and handlers could take place with adequate safeguards for all parties. This bill establishes procedures for organizing and certifying bargaining associations to represent farmers in contract negotiations with handlers. The bill establishes a code of conduct that prescribes the rights and responsibilities of all parties to the negotiations. H.R. 3535 empowers the Secretary of Agriculture to mediate and arbitrate contract disputes, and it prescribes penalties for those who engage in unethical conduct. The most important aspect of the National Agricultural Bargaining Act of 1979 is that it would compel all parties to bargain in good faith once established criteria for representation had been met.

The procedures established in this bill are fair and balanced. That balance, I believe, accounts for the unanimous support of the sponsoring farm and cooperative organizations represented here today. America's farmers are not asking for any special privilege. We are asking to be permitted to use the same tools now used by other members of society to bargain for a fair deal. We believe that you share our concern that America's farmers no longer be denied a fair, effective and workable bargaining procedure.

(Exhibit I follows, Exhibit II is held in the subcommittee file.)

EXHIBIT I

1979 POLICY OF

NATIONAL FARMERS UNION

Adopted by Delegates to the 77th Annual Convention
Kansas City, Missouri

March 11-14, 1979

G. Domestic Marketing Policies

Price support and supply management programs provide a basic framework of protection for agricultural producers in the marketplace by preventing the price-depressing effect of oversupply. Alone, however, they do not sufficiently fortify the weak bargaining position of producers, nor assure fair prices. Additional mechanisms are needed to improve the producer's position in the marketplace.

1. Improved Marketing Mechanisms

National Farmers Union calls upon the Congress to strengthen the Marketing Agreements Act of 1937 to extend marketing order authority to all commodities and to further amend the Act to: (a) provide for bargaining between elected producer committees and handlers for adequate price as well as other terms of sale; (b) direct the Secretary of Agriculture to administer market supply control programs when and where necessary, subject to approval by a majority of producers concerned; and (c) authorize pooling of sale proceeds.

Market orders have proven their worth in milk, fruit, vegetables, and tree nuts. Placing market order authority with these improvements within reach of all producers is urgently needed to assure greater producer marketing power.

National Farmers Union also reaffirms its support for enabling legislation to establish a National Agricultural Relations Board or separate boards for single or groups of closely related commodities, with authority to bring farmers/ranchers and farm cooperatives together with processors for the purpose of bargaining over prices received by agricultural producers. Farmers/ranchers need and are entitled to a firm legal procedure which will enable them to manage the production and marketing of their products. Such legislation should preserve, unimpaired, the long-standing rights of farmers and ranchers to participate in bargaining associations and cooperatives without being subject to antitrust action.

We favor amendment of the Agricultural Fair Practices Act to require the buyers of agricultural products to bargain in good faith with associations of producers.

We support the concept of the Interstate Grain Marketing Compact now being considered by legislatures in 14 major grain producing states. The National Farmers Union will function as a coordinating and information service between the states to assist in securing passage in as many states as possible.

2. Pooled Marketing by Cooperatives

We support and encourage efforts now being made by large regional cooperatives to pool sales of wheat and other grains, cotton, soybeans, and other commodities, and urge producer cooperatives to participate in such programs where available.

3. Market Information

The USDA should make full disclosure weekly of grain inventories on hand and report all domestic and export grain sales for the previous week. In addition, USDA should act as an early warning system, identifying and making public agricultural issues before they develop into political crises.

Crop reporting systems should be based upon honest and accurate reporting of relevant data, and should be administered by the Agricultural Stabilization and Conservation Service (ASCS) through local offices and committees.

We urge Congress to fund satellite research programs that are used in weather and crop forecasting, pollution monitoring, sea navigation, and mineral exploration. We also require that this material be made public.

The major commodity markets need to be investigated to determine the positive and detrimental forces that affect commodity prices. If the investigation so indicates, legislation should be drafted to correct the inequities.

4. Agricultural Census

We commend the Bureau of Census for taking steps to involve farmers and ranchers in the construction of census forms, shortening them, and alleviating other problem areas. The facilities of the ASCS should be used in the construction of farm/ranch operator lists. Publication of census information should include statistics which reflect the status of rural community life such as transportation, education, communication, health, and housing.

We encourage continued collection of needed data relating to the corporate involvement in agriculture and coordination with information collected on foreign involvement in the purchase of farmland and agricultural enterprises to more clearly reflect the patterns of ownership and management of United States agriculture.

Statement of

Kenneth D. Naden
President
National Council of Farmer Cooperatives
before the
Domestic Marketing Subcommittee
House Agriculture Committee
on
H.R. 3535, the Agricultural Bargaining Act
July 10, 1979

I am Kenneth D. Naden, President of the National Council of Farmer Cooperatives, representing the off-farm cooperative businesses owned and controlled by more than 2 million U.S. farmers.

The survival of the family farm system which has been so productive, so efficient and so beneficial to our consumers and our national interests is dependent on the ability of farmers to work together in off-farm buying and selling and financing activities. Without cooperatives, a farmer cannot deal on an equitable basis with the many large corporate elements of the food, fiber and farm supply industries.

The U.S. Congress and other national leaders have traditionally and consistently recognized the urgent national need for an agricultural cooperative system. The Capper-Volstead Act of 1922 and other key Congressional actions have enabled farmers to band together in various programs of self-help in joint marketing, purchasing of farm production inputs, and other activities.

The intent of Congress that farmers' rights to organize and conduct cooperative activities without undue interference has been seriously challenged by unfriendly interests in recent years. Farmer efforts to form cooperative associations which could gather information, bargain for fair contract terms in the sale of farm products, and otherwise represent farmers in marketing activities often met with coercive or discriminatory actions by buyers which were intended to hamper or destroy these cooperative efforts.

Because of these threats, and after lengthy and careful consideration, Congress passed the Agricultural Fair Practices Act of 1967, which prohibited coercive or discriminatory acts against farmers which would hamper their ability to form and fairly operate their bargaining cooperatives.

Although this act has been helpful, it has been only partially successful. Discrimination against individual farmers has been limited, but the focus has been shifted to efforts by some handlers (buyers) to discriminate against the entire bargaining association by refusing to negotiate seriously and in good faith.

This continuing effort to hamper farmers' cooperative efforts in clear and distinct contradiction of the longstanding Congressional encouragement of cooperative efforts is the reason for the legislative proposal now before this committee. H.R. 3535 does nothing more than require that handlers shall negotiate in good faith with duly organized farmer bargaining associations. The charge made by opponents that this would lead to monopoly control is a spurious one. The language of Capper-Volstead prohibiting "undue enhancement of prices" provides positive protection against any opportunity for undesirable monopolistic power to be exercised in bargaining as in any other farmer cooperative marketing activity.

H.R. 3535 has been developed after a long and careful process of discussion and debate among farm leaders of the major national farm organizations and existing bargaining groups. Leaders throughout the U.S. have participated, and critics' views as well as farmers' needs have been carefully considered. The most successful bargaining leaders have recognized that strengthening of farm prices beyond that which market factors of supply and demand permit would be damaging in the long run to farmers as well as to handlers and to the public interest. The role of the Secretary of Agriculture in accrediting only a responsible and properly organized bargaining group recognizes the need for due restraint in good faith bargaining.

Farmers who choose to bargain cooperatively need the help this bill would give in assuring them a fair return. And unless farmers can gain adequate returns through cooperation and other efforts, in the long run our present farm production system may be replaced by some form of corporate and/or public utility structure which would indeed be able to exercise substantial monopoly power -- and in the opinion of many agricultural experts, be less efficient than our present family farm system.

In view of these considerations, we urge this subcommittee to give most favorable consideration to H.R. 3535. The National Council gives its firm support to the bill as one more step in the series of Congressional actions over many decades affirming and re-affirming the right of American farmers to work together without undue interference, in furtherance of their own and the national interest.

I appreciate the opportunity to make this statement.

Mr. Panetta. Thank you.

We want to thank you other gentlemen for your testimony. We appreciate your coming before the subcommittee to present the view of your respective organizations.

Let me ask a few questions.

First of all, with regard to the inadequacy of the Agricultural Fair Practices Act of 1967, which did prohibit coercive and discriminatory acts against farmers, which would hamper their ability to form and fairly operate their bargaining cooperatives; what do you think? That was established with that hope in mind.

Obviously, there seems to be a need for additional protection.

I was wondering if any of you could cite particular examples as to why the additional protection of H.R. 3535 is required. What kind of instances are you aware of in which farmers have not been subject to fair bargaining with processors?

Mr. Datt. The Agricultural Fair Practices Act of 1967 basically established some unfair trade practices. It did not take the additional step of requiring bargaining in good faith. In fact, it had been treated, and still is treated, by the Department of Agriculture as a law that they have. They really have not given it much attention. It has never really been given very much priority insofar as the Department is concerned.

In the early stages there were a number of cases where we and others felt that unfair practices were involved. They were filed with the Department. It became such that the Department did not follow up and vote the resources that we felt were necessary.

More importantly, it did not provide, as does H.R. 3535, the requirement that there be bargaining in good faith and provisions that, failing that, which would provide for arbitration. This procedure is a part of the existing legislation, of course.

What I am really saying is this. The Fair Practices Act of 1967 set ground rules, but these have really never been enforced by the Department. Even if they were, they missed the one missing element that this legislation has, which is the requirement for bargaining in good faith.

Mr. Scott. Mr. Panetta, there is an incident that involved some of our members 2 years ago. The producers were a little bit unhappy with the price they were being paid. They tried to bargain with the only processor available in that area. He said: "Look, if you fellows want to get tough, then we will pull out of Pennsylvania and buy all of our processing products in New Jersey." These were vegetables, mostly.

That is the kind of incidents I think that happens. This happened in my home State of Pennsylvania.

Mr. Panetta. Let me ask you gentlemen this. I wonder if you would respond to some of the criticisms raised. Some of you touched on this in your testimony.

The primary criticism which has been raised is that somehow this approach will restrict competition and will make the bargaining process one sided.

Could any of you respond to that argument?

Mr. Naden. Mr. Chairman, I will try to respond to that.

The present situation is so one sided that it certainly cannot be called equitable or fair by any stretch of the imagination.

This bill is an attempt to give some teeth and strength to those farmers who are willing to make a commitment and willing to work together and willing to put a stronger face on their activities.

Until the claim that can be made that equality of bargaining power is reached, it is an invalid argument. We are so far away from equality now that it is a joke.

Mr. PANETTA. So you say this basically equalizes the relationship of one that is imbalanced at the present time; is that right?

Mr. NADEN. It would give some strength to moving in that direction. If the farmers themselves are willing to show a great deal of determination and firm determination in their own group efforts, will the law ever become effective?

Farmers have to help themselves first before the law will help them.

Mr. PANETTA. Mr. Dechant.

Mr. DECHANT. Mr. Chairman, I have heard the words "monopolistic" and "anticompetitive" and perhaps even "inflationary." I agree with the comments you made a moment ago, Mr. Chairman. This will seek to equalize the market power of producers and handlers.

I think this will move to a more stable supply and price conditions. It will treat all buyers evenly.

I think it works as well on the other side as it does on the producers' side. I hear criticism that somehow or other this is a bad bill for the processors and the canners. Any contact to be of any value has to be a two-way street.

I think the bill will work as well on the other side of the street as it does on the producers' side. The essence of the bill is to bring about good faith bargaining.

Surely no one is going to oppose that. That is what bargaining is all about. You negotiate, but it has to be done in good faith. It cannot be done, as Mr. Scott just pointed out, where someone just up and says: "If you do not like it, we will move to New Jersey." That is not bargaining in good faith.

Mr. DATT. There is no incentive today for a group of farmers to get together and organize a processing association, knowing full well that once they do that, that they may or may not be recognized by that particular processor.

As a result of that, there is no real incentive for a group of farmers to apply the discipline that Mr. Dechant indicated.

This bill provides that once they made that decision, then there will be ground rules for them to operate with the processor or the handler of that particular agricultural commodity.

I can assure you that the Farm Bureau does not view that as moving in the direction of monopoly or restraint of trade. It simply provides the farmer with some of the tools that other parts of society have.

Mr. PANETTA. I believe one of you referred to the fact that one of the basic targets of this proposal aims at fresh fruits and vegetables, as well as poultry items.

One of the concerns that has been raised is how it would relate to the larger commodity crop, such as wheat and corn and those that are not extremely perishable.

What would be the impact of this legislation with regards to those crops?

Mr. **Dechant**. Mr. Chairman, I think I pointed out that primarily—at least in my opinion, it would probably apply more readily to fruits and vegetables, to perishable commodities.

However, I pointed out also that it should not necessarily be restricted to that.

If there are ways that other commodities can use the bill, then the farmers ought to have the right to do that. It is just like the processors of vegetables and fruits ought to have the right, and do have the right, to use all other mechanisms that are available to them on the agricultural front.

I think there should be the possibility for all to be there, that is, for farmers to decide how they are going to use it.

However, having said that, I believe the prime use will probably be in the perishable produce area.

Mr. **Panetta**. The concern was expressed like this. There were efforts, it was said, to exempt various crops from coverage by this legislation. I would assume those same pressures would arise with regard to this bill.

Is it your feeling that those crops ought to be retained under the jurisdiction of the legislation, but based on a voluntary basis of those orgainizations that decide to use it or not?

Mr. **Dechant**. Yes; I think farmers ought to have the right and the producers ought to have the right to make that decision.

Mr. **Datt**. Mr. Panetta, no one knows today about this. Ten years ago if someone had suggested that we would have contracting take place within cotton and some of the other commodities, then they would not know. We do not know what is going to take place in advance contracting.

To exclude them you are taking away the opportunity down the road somewhere where a group of producers might want to use this particular legislation. Therefore, we would encourage that there be no exemptions and that all producers be given the opportunity to use the bill if they so choose.

Mr. **Panetta**. One final question. This relates to the criticism of establishing further Government intervention and regulation of agriculture through this mechanism.

Obviously your organizations have taken strong stands against traditional interference by Government into agriculture. Let me ask you to respond to that particular criticism.

Mr. **Naden**. The long-standing national policy for the Government of the United States has been to enter the economic process whenever it was necessary which was to establish equity. It is a fundamental principle of a democratic society There can be no valid objection from anybody in any place whenever the fundamental right to be established is that of equity in the marketplace.

That is exactly what is being considered here. The Government is the only instrument, in many, many cases, outside of armed intervention and violence, which can establish equity. If we are going to establish and abide by society of laws, then the Government has to be arbiter.

The long history of the antitrust laws and virtually hundreds of other laws has been to curb excessive market power on the one side and to support insufficient market power on the other side wherever the public interest requires it. That is what this bill is doing.

This bill is in complete sympathy with that general long-standing tradition.

Mr. SCOTT. Mr. Chairman, I would agree totally with what Mr. Naden has said. We have supported many of the laws that have controlled the strong and helped the weak.

Mr. DATT. When you say that we have been opposed to Government in agriculture, that is pretty broad. We have supported the use of the Agricultural Marketing Agreement Act and the Fair Practices Act and the Packers and Stockyards Act. We feel a number of these types of things are important in terms of establishing the ground rules for the marketing of agricultural commodities. We believe the Government has the proper role in that particular area.

We do not feel that H.R. 3535 violates that point of view which we have had since the organization was founded.

Mr. PANETTA. Gentlemen, I think you have been quite responsive to the criticisms I have raised. I thank you for that. Obviously, that would be the major focus of testimony in the bill.

Mr. Harkin.

Mr. HARKIN. Thank you, Mr. Chairman. I am sorry that I was late.

We have a lot of problems on the floor of the House when we bring up agriculture bills. Your organizations are now heavily involved in grain elevators, milk plants, oil seed crushing plants, marketing insurance, and other form of business enterprises for the benefit of your members.

Do you not think there might be a problem in taking a bill like this to the floor of the House and risking another round of public condemnation of large producer cooperatives which are getting more and more bigger and bigger? Do you think there is a fear of that?

Mr. NADEN. No, Mr. Harkin. That fear is greatly exaggerated.

I think this is relatively minor in terms of it being a bill in the whole field of national economic policy. It will not shake up the economy one way or the other.

It is important to us at a certain level of operations under certain circumstances, but it is mainly a supplement to all the other laws and regulations which help farmers.

It is designed to fill a niche in the whole procedure which is not now covered.

Mr. DATT. I would agree with that. I would not anticipate any difficulty. This is not going to change the world tomorrow. This is an additional tool so far as farmers are concerned.

I think the general public and the Congress is prepared to support this type of assistance to agricultural producers.

Mr. HARKIN. Mr. Naden, I do not think there has been a stronger supporter of farmer-owned cooperatives than myself since I have been in Congress. I think you know this.

I perhaps am a little confused right now. I regarded the co-op council as the Washington representatives of the managements of the major regional cooperatives. You are now appearing as a legitimate farm organization in support of this bill. That is fine with me.

Did the National Council of Farmer Cooperatives take any position on some of the other bills that we have had recently, like grain price support increase, increase in the manufacturing of milk price support rate, the crop insurance bill, and the Weaver bill?

Mr. **Naden**. No, sir, we did not. We do not have policies generally in the area of the Government programs regarding the commodities themselves.

Mr. **Harkin**. Why would you take a position on this bill and not the others? They affect the members of your own cooperatives?

Mr. **Naden**. Because it involves the right of a basic principle of farmers to cooperate. Our organization is what you would call a cooperative organization. It is, therefore, concerned with the opportunity to cooperate in off-farm business opportunities. The opportunity is there for them to cooperate in fair competitive conditions and to be recognized as a legitimate off-farm operation of the farmers' business operations.

Mr. **Harkin**. In other words, this is not a new departure for your organization?

Mr. **Naden**. No. We hoped to be a spokesman for farmers right to cooperate from the day we organized. We want to pursue that as vigorously as we can. This bill is in that mold.

Mr. **Harkin**. Thank you, Mr. Chairman.

Mr. **Panetta**. Mr. Grassley.

Mr. **Grassley**. Thank you, Mr. Chairman.

The last question raised the main point that I am interested in. There is the basic point as to whether or not this is additional Government involvement in agriculture. Even if it is legitimate, the question is whether or not it is needed.

I see from the testimony that there will be overwhelming evidence that it is needed.

On the other hand, as I have looked at the bill, it seems to me like it gives a great deal of power to the Secretary of Agriculture and a great deal of bureaucratic red tape might be involved. I do not know whether that is legitimate, but it seems to me that might be a result.

The Secretary of Agriculture is going to have more power than we have been willing to give him in the past. I am talking philosophically, of course.

I will look at the testimony and study the bill and look for the need of this bill, but I think we need to consider the extent to which this gives increasing power to the Government. So, we might want to move slowly in this area.

Thank you, Mr. Chairman.

Mr. **Datt**. I would like to comment on that, Mr. Chairman.

I was one of those who was involved with the drafting. In many respects, it is patterned after the Packers and Stockyards Act which you are familiar with, Mr. Grassley. Under that act, you give the Secretary of Agriculture substantial authority as it relates to the movement and sale of livestock, poultry, and so on, in this country.

I would suggest to you that H.R. 3535 does not go any farther in terms of giving the Secretary power and authority than we have given him under the Packers and Stockyards Act or under the Marketing Agreement Act and some other authorities.

I do not think that we are suddenly giving the Secretary new authority. This is patterned after other legislation which exists in the agricultural marketing field today.

Mr. **Grassley**. I appreciate that. I will look at the bill from that standpoint.

On the other hand, I was making my comments based upon some personal philosophy as well as my first reading of the legislation.

Thank you, Mr. Chairman.

Mr. **Panetta**. Mr. Symms.

Mr. **Symms**. Thank you, Mr. Chairman.

I am sorry I was out of the room. Maybe the subject has been brought up, and so, Mr. Chairman, please correct me if it has been dealt with.

Oftentimes when an effort is made to what people view to be a noble cause, the result is that something else happens.

In this age of consumerism, do you think there would be any risk of bringing up a bill like this that somebody might start attacking the Capper-Volstead Act? Do you have any concerns about that, Mr. Datt?

Mr. **Datt**. Of course there is always the possibility of the amendment process. This was discussed earlier while you were out of the room, Mr. Symms.

We do not think that this would be attacked by consumers or be the basis for an attack on the Capper-Volstead Act. In fact, we would view this as a way to strengthen the Capper-Volstead Act by the Congress, reiterating its support for farmers and ranchers having the right to get together and organize on a cooperative basis.

We would view this as an attempt to strengthen and support the Capper-Volstead Act. While there may be attempts——

Mr. **Symms**. My concern is the whole subject.

Mr. **Datt**. Yes, but I have confidence that if you and Mr. Panetta were both for the bill on the House floor that you would succeed in taking care of those amendments that might take away from this.

Mr. **Symms**. Let me ask you one other question. I think we have discussed this privately.

Is there any problem with the California bargaining bill or the Michigan bargaining bill, or some other State setting up their own bargaining bill and not getting the Federal Government involved in this at this juncture?

Is there any particular reason why we want to give the Federal Government all this authority and make the Secretary of Agriculture able to go out and make arbitrary decisions on who gets to bargain and who does not?

Or would we rather try to do this from a State standpoint? Is there reason why the Farm Bureau would take the position which is somewhat unusual with the general philosophical position that the Bureau has espoused in the past?

Mr. **Datt**. I would not agree with that last statement. This is not inconsistent with the Farm Bureau's philosophy. There are some areas, like the Marketing Agreement Act and the Capper-Volstead Act, and others, where we have supported the use of Government power in terms of regulating and assisting in the marketing of agricultural commodities.

I think our experience has been that we have a law in California which Mr. Panetta knows about very well, and there is one in Michigan as well. What has happened in the last 10 years particularly, is this.

You have increasingly, particularly in the fresh fruit and vegetable field, a number of cooperatives who operate in a number of different States. While you may have an effective California law, and an effective law in Michigan, if you do not have an effective law in Indiana, they simply circumvent one State by moving their plant or moving their acreage to that particular place.

This is why our voting delegates and our leadership came to this point of view. This is about the third time that we have been around on this legislation. We want to support something national and something that would cover all States. There is a need for something like this.

We would rather do this than go the route of State-by-State, which is a long drawn out process. It does not necessarily achieve the final objective.

Mr. SYMMS. How many bargaining associations do we now have?

Mr. DATT. I cannot give you that answer. The other witnesses are much more familiar with the exact number than I. Mr. Stuckman could probably give you that. The field has changed rapidly in the last 4 or 5 years.

Mr. SYMMS. Is there anything stopping anybody from having a bargaining association now?

Mr. DATT. The major problem is that farmers can organize and then the processor refuses to recognize them, deal with them, and bargain with them in good faith. Then all their efforts have failed.

There is no incentive, then, to organize unless you have some assurance that once you have made a commitment to be a part of a bargaining association, that that processor, in fact, is going to bargain with you in good faith.

Mr. SYMMS. Thank you, Mr. Chairman.

Mr. PANETTA. Gentlemen, we want to thank you for your testimony.

Our next witnesses are Mr. Willis Rowell, assistant to the president, National Farmers Organization; Mr. Walter Hackney, director of the livestock department; Mr. Ed Graf, director of the dairy department.

Gentlemen, we welcome you and we thank you for taking the time to come before us to present your views. You may proceed.

[The statements of the above panel follow:]

News From
National Farmers Organization

Suite 2350
485 L'Enfant Plaza, SW
WASHINGTON, D C 20024

Statement of Mr. Willis H. Rowell
Assistant to the President
National Farmers Organization
Corning, Iowa

Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition
House Agriculture Committee
July 10, 1979

Mr. Chairman and Members of the Subcommittee, we appreciate this opportunity to express our views on H.R. 3535, the proposed National Agricultural Bargaining Act of 1979, introduced by Mr. Panetta of California on April 9th of this year. A similar bill was introduced in the Senate on May 22nd by Senator Huddleston of Kentucky.

The National Farmers Organization, first organized 22 years ago as a protest group in Southern Iowa and Northern Missouri, has developed a bargaining program to assist in moving members' production at advantageous prices. We are actively operating successful bargaining programs. We have ongoing contracts to move members' production of grain, cotton, livestock, milk and some minor commodities. For example, one of our more effective commodity contracts covers a substantial part of the sunflower production in Minnesota and North Dakota.

So far we have not developed as large a membership as some of the older general farm organizations, because we have resisted the temptation to deal in production services and supplies, insurance and other activities for the benefit of our members. Instead, we have put the full force of our resources into the operation of successful bargaining programs. Incidentally, it should be noted that many NFO members are also members of the other farm organizations. They participate in those organizations for some purposes and join us to sell through our commodity contracts.

We appear before you today to show you why this legislation is unneeded. In fact, if it is given serious consideration in this Congress, we are certain it will prove to be a source of dissension among producer groups at a time when we need to develop more unity. We should concentrate more of our efforts on the survival of family-sized farmers and ranchers in this country and spend less time hassling about farm legislation.

H.R. 3535

This is a bad bill for several reasons. In the first place, it runs directly counter to the will of the American people that we find broadly expressed throughout the country today. It would establish a new regulatory agency with the power to impose accreditation standards, receive complaints, hold hearings, participate in the bargaining process as mediator or arbitrator, and finally, with authority to impose fines on those who did not comply with regulations that are yet to be defined. Furthermore, the Secretary of Agriculture and this regulatory force would be empowered to initiate such a chain of action without every waiting for complaints or requests for interference by those who are directly involved in production or handling of farm commodities.

This bill extends to the bureaucrats in the USDA more authority than was first granted through the marketing quota legislation in the 1930's and marketing order authorities in other acts of Congress, and does not even call for a producer referendum before imposing such supervision on both producers and other businessmen with whom they are dealing.

Its supporters may insist that the bill is permissive and not mandatory in nature. This is an erroneous assumption because once these provisions are established in law, peer pressure and the threat of investigation will force all commodity groups who are undertaking to represent their members in the market to seek accreditation. That will subject their operations to continuing scrutiny by the government. In all probability, they would be required to file numerous reports and disclose trade secrets to the government personnel who will have almost unlimited authority to examine and question their operations.

Economic Implications

We are convinced that, good intentions of the authors notwithstanding, most government programs wind up serving the larger, more powerful participants simply because they have the resources to employ lawyers, accountants, economists and other talented personnel to help them become larger and more powerful in their particular areas. The authority contemplated in this bill probably would be used by some commodity producer groups to dominate a market and eliminate competition of new producers who are needed to sustain a broad base of food production in this country.

Any Member of Congress who is skeptical of this viewpoint is encouraged to examine carefully the record of loans made recently by the Small Business Administration, the size of beneficiaries of disaster loans and payments under the farm program, and the amounts of money loaned to the larger borrowers from the Bank for Cooperatives.

Quite obviously, if such a bill becomes law, we will be compelled to qualify as an accredited bargaining agency on a number of commodities and seek such advantages as may be derived by that course of action. However, in fairness to our members, the business people with whom we are dealing and the consumers who ultimately must pay for the food we produce, we believe that government supervision of farm bargaining would be an expensive and unnecessary public burden.

There is another important consideration. We know that Members of this Subcommittee are knowledgeable about farm and ranch operations. You surely will agree with me that the present energy crisis is almost certain to bring on more inflation in all prices, including food. It would be quite understandable if the Members of this House seek every means of limiting food price increases. This is not the time to bring out a loosely drawn piece of legislation that may attract harsh amendments limiting such bargaining authority as is now available to all producers.

Capper Volstead Act of 1922

The Clayton Act of 1914 exempted labor, agricultural and horticultural organizations from provisions designed to control combinations and conspiracies in restraint of trade, but this protection did not extend to incorporated structures.

This authority was refined and reinforced in the Capper Volstead Act of 1922, permitting farmers to incorporate their associations and utilize the services of common agents to effectively bargain with corporate counterparts in the marketplace. Other provisions of law have enhanced the ability of Capper Volstead organizations to finance their development and represent their membership effectively.

There is no barrier to effective bargaining in the sale of agricultural commodities at this very time. If any group of producers are willing to commit enough product to interest a buyer and control the quantity and quality of their marketings, those producers can price their own products without any additional legislation. Without this commitment to block a sufficient amount of the commodity to attract the buyer and negotiate a price, additional legislation and government interference will be meaningless. Such legislation will only tend to increase marketing costs for producers and hold up the development of farm bargaining. Regrettably, we must conclude that our colleagues in other organizations have not yet learned to bargain effectively.

Agricultural Fair Practices Act of 1967

If the sponsors of H.R. 3535 are willing to set aside the whole ambitious regulatory activity contemplated in this bill and consider improving amendments to the old 1967 Act, we would be happy to participate in such a review. Spokesmen for this organization testified for modification of that bill before this Committee in September 1967. We recognize now, as we did then, that some of the provisions of that law could stand improvement.

In concluding this phase of our Testimony, Mr. Chairman, please let me emphasize our belief that the bill H.R. 3535 will actually hamper or seriously slow down the development of sound bargaining techniques in behalf of producers.

We do not want government supervision of bargaining. We are prepared to demonstrate that such interference by government is entirely unnecessary.

Let me present to you Mr. Walt Hackney, head of our livestock operations and then Mr. Ed Graf, who deserves much of the credit for developing our NFO milk bargaining programs. These men will discuss bargaining as it is authorized and practiced under current law.

Suite [illegible]
485 L'Enfant Plaza, SW
WASHINGTON, D.C. 20024

News From
National Farmers Organization

Supplementary Statement of
Mr. Walt Hackney
Corning, Iowa
July 10, 1979

My name is Walt Hackney and I am in charge of the Cattle Department in the National Farmers Organization at Corning, Iowa.

The end result of a bill, such as the National Agricultural Bargaining Act of 1979, H.R. 3535, will be a total fragmentation of the current program that can and does tend to stabilize and strengthen, through collective bargaining, the livestock marketing on a national level.

The National Farmers Organization, at this time, has a collective bargaining program for the independent producer. This program has been able to operate very effectively in recent years, under the Capper Volstead Act of 1922. It has enabled the NFO to become a vital tool to the agricultural industry through our ability to collectively pool the individual producers' products and merchandise or bargain for them in volume. These units of product are considered significant enough in size to get the attention of the respective processors and they are more willing to give competitive prices than if the blocks were fragmented into lesser amounts.

We are doing business with almost every major processor in the industry -- Armour, Wilson, Morrell, Swift, MBPXL, Dubuque, Sioux Pac of Iowa, Packerland of Green Bay (the nation's largest cull-cow slaughter), to name a few on a national scope.

The industry is a prime example of our method of marketing. During the 50's, the cattle industry was fragmented into individuals and they were doing a poor job of marketing. In the 60's, it became apperent the survival of the industry was dependent upon its ability to reconstruct and develop a merchandising program that would collectively, give them a volume-base to market from. Thus the commercial feedlots of Kansas, Colorado, California, Texas, Nebraska and Oklahoma came into being. However, there remained a "forgotten" group of livestock producers who were small and basically insignificant, as far as volume was concerned. The independent, individual farmers. Thus, the NFO, on a national basis, became their "commercial feedlot" so to speak. This program simply takes the individual producers in a given area and collectively blocks their product into one sizeable unit for marketing instead of allowing the processor to fragment them down to a "one-on-one" basis.

The "one-on-one" concept is one that I have had considerable personal experience with over the past 20 years. I was head of Procurement for several of the large packing companies in the Midwest and Southwest areas of the United States. In order to fulfill our daily sales orders and kill requirements, we were forced to go to the commercial feedlots with their professional sales people and procure that portion of our required kill that would insure us a workable inventory for the coming week. These cattle were knowingly purchased at prices that exceeded our ability to make a profit on them. However, we were willing to make these initial purchases because they offered us the (1) volume, (2) consistency of quality and (3) kinds to fulfill the immediate portion of our kills. Our next step was to take our seasoned, professional crew of buyers and put them into the Midwestern cattle feeding communities to purchase cattle, "one-on-one" from the less-than-professional Midwest farmers who had neither the sales ability nor the individual volume to command premium prices and could not compete bargaining-wise, with the professional buyer. This "one-on-one" method of buying gave us the opportunity to offset the original portion of our kill that was bought too high. We, then, could finish our weekly kill requirements in a more profitable fashion.

The NFO's structure of collection, dispatch and delivery is specifically designed to furnish the individual producer exactly the same benefits and luxury of sales premiums as is being enjoyed by the larger blocks of products, such as the commercial feedlots. An example of our system can be illustrated by using the tremendous success we have in selling cows in the State of Wisconsin.

In January of 1978, the farmers of Wisconsin were habitually marketing cull cows by simply moving them one at a time through the local auctions or to the cattle traders who were buying "one-on-one" at the farm level. This concept of fragmentation demoralized the market and curtailed the price potential for this product.

The NFO chose this State market to test our collective bargaining method and improve our market posture. We started blocking these dairy cows into "weekly blocks" of 600 head up to 1500 head per week. The cows were then offered in blocked-volume to the respective packers in the locality, freight-wise, of the cattle. The accompanying attachment shows the tremendous impact we have had since then on the cow market versus the "old-style" of marketing, using the USDA market figures on a monthly basis as a comparative. Through this program we have become recognized as the largest single supplier of raw material to the local processors, on a weekly basis, and consequently the packers have become very reliant upon us for their ongoing source of supply. They, the packers, use us, as they earlier used the commercial feedlots, for their initial volume of kill and then go on the "outside" to try to cheapen their weekly kill.

I might add that the packing industry is extremely receptive to the method we have currently in operation. They accept our descriptions of weight, grade and yield of the livestock blocks and consider it a savings to themselves by not being required to suffer the expense of having one of their salaried representatives physically observe and solicit the product and are willing to pass along that savings to us as a portion of the extra price.

This only illustrated our power of bargaining with volume blocks and is the same program that we have on a National level for all species of livestock (for example, hogs, feeder cattle, fat cattle, cull cows and sheep). This success of collective bargaining in a complete program such as the NFO, can continue to be exercised as it is currently being applied, but any additional bureaucratic involvement could very possibly deteriorate the national application of this very successful program.

The H.R. 3535 proposal will tend to further fragment our producers and take away their potential block in volume through an organization such as the NFO. We are dedicated to the preservation of the independent producer and strongly oppose any venture that will tend to destroy him. We believe H.R. 3535 will do exactly that.

Thank you.

Attachment

COMPARATIVE PRICES BETWEEN NFO AND USDA MARKET REPORTING SERVICE IN WISCONSIN

Prices which NFO has obtained for slaughter cows in Wisconsin have been running consistently ahead of the State average price for several months, according to statistics compiled by Joe Salm, NFO Slaughter Cattle Representative in that State.

Using average prices by month, compiled by the Wisconsin Statistical Reporting Service and comparing them to NFO's realized prices for the same month, Salm came up with this table:

1978	Wisconsin Statistical Reporting Service State Average	Average Prices Paid to NFO Producers
January	$26.90	$29.40
February	30.80	31.04
March	33.30	35.00
April	35.60	41.10
May	38.10	40.80
June	37.70	40.98
July	38.10	41.20
August	37.40	41.45
September	37.90	42.20
October	40.40	42.30
November	40.00	42.88
December	41.10	48.18
1979		
January	48.20	51.60
February	51.30	53.20
March	53.90	59.85
April	57.50	61.35
May	57.00	62.40

STATEMENT OF ED GRAF, DIRECTOR, DAIRY DEPARTMENT, NATIONAL FARMERS ORGANIZATION

Mr. **Graf**. Thank you, Mr. Chairman.

My name is Ed Graf. I am head of the dairy department in the National Farmers Organization headquarters at Corning, Iowa.

I first became interested in bargaining for fair prices as a Wisconsin dairyman and member of the NFO. The obstacle to bargaining has not been a matter of legislative authority but rather, the lack of organization of a sufficient number of farmers to establish fair prices through collective bargaining.

Real bargaining starts when you have something that somebody else needs and they cannot get it anywhere else in sufficient supply. It is very easy to bargain then.

Today, some farmers are putting their production together under the authority established by the Capper-Volstead Act and bargaining is a fact of life.

In 1968, when I became director of the dairy department of the NFO, we attempted two things—to bargain with the processor and to move production out of low-priced areas as a part of that bargaining action.

When we move production out of a low-priced area, prices paid there generally move up. Buyers would have to raise the price to keep production from leaving their area. That is exactly how it happened.

For example, when we moved milk from the State of Missouri to a buyer in the State of Texas, we accomplished both of those two objectives. We found out what we had to do to affect prices through bargaining and we found out that we, as farmers, could move that production with a bargaining structure that we had created. We call it the collection, dispatch, and delivery system.

In all fairness, I should add that we are not alone in discovering the value of being able to move the product from one market to another. It is a clean, acceptable business practice and it is understood by those with whom we deal, as well as our own members.

We have NFO contracts with a number of major handlers such as Borden, Sealtest, Beatrice, and Universal Foods. We have many contracts with both cheese manufacturers and butter-powder plant operators. Roughly half of our milk goes to grade A bottlers.

There are 42 reload stations in which we collect some producer's milk and, as may be necessary, move excess production out of the home area in order to bargin for fair prices.

We can supply milk to handlers nearly anywhere in the United States. Of course, transportation costs, seasonal market influences, and many other factors must be considered in each case.

The NFO dairy department has divided the United States into geographical areas with offices located in the field, with testing laboratories serving our members and field representatives to inspect farms to make sure that we deliver a quality product.

Major supply contracts are negotiated by personnel in the headquarters office. The field representatives make day-to-day decisions on tanker movements and adjustments of supply to meet a buyer's needs. We literally move several million pounds of milk each day.

We have proven beyond the shadow of a doubt to buyers who have been dealing with us over the years that the NFO will bargain justly and fairly but with market strength. We have proven that current legislation is adequate.

At this time, many of our buyer's recognize that NFO has the right under existing law to demand and receive cost of production plus a reasonable profit. They are signing contracts today knowing that this is the goal the NFO has established for its farmer-members.

Contracts of this type would not have been signed with major buyers if farmers did not have the necessary legislation, the strength, and the know-how to bargain.

If there is anything we do not need at this time, it is another piece of legislation encouraging various groups to engage in charges, counter-charges, and rule changes that would keep the industry in an uproar.

We believe H.R. 3535 should be rejected by this committee.

I would be happy to answer any questions about our dairy operation.

Thank you.

Mr. **Panetta.** Thank you, gentlemen, for your testimony.

Let me ask you a couple of questions.

Mr. Rowell, you indicated that with regard to the Fair Practices Act of 1967, "we recognize now, as we did then, that some of the provisions of that law could stand improvement."

Let me ask you to expand on that and indicate what area you think should be expanded so far as that is concerned.

Mr. **Rowell.** Mr. Chairman, with your permission, could I ask that of our Washington office representative, Mr. Frazier?

Mr. **Frazier.** It was our understanding that some of the provisions of that bill were bent slightly. It is my understanding from our general counsel, Mr. St. Clair, who is active with members of the other organizations that appeared before you this morning, that in working on that legislation that certain provisions were injected in the latter stages of the legislative process that turned parts of the bill against the producer segment, so to speak.

In other words, there were advantages given to those on the industry side of the bargaining process.

We have not undertaken to develop any amendments or any proposals, but we do wish to indicate to you a willingness to cooperate in examining that law and arriving at some acceptable amendments, if that should be the will of the committee and others who are interested in this legislation.

Mr. **Panetta.** I would be interested in any specifics you would have with regard to the improvement because obviously the testimony that will be presented here throughout the day and tomorrow will indicate that at least in many instances dealing with bargaining associations that the present law is not very effective in giving them the ability to bargain fairly with processors.

I would be interested in what your suggestions are along those lines.

You seem to be an organization that basically is operating as a large co-op in the sense that you are, in fact, blocking various commodities and trying to deliver goods at any particular time.

It would seem to me that this form of legislation would be helpful to you rather than harmful. I still am trying to understand why you feel that elements like accreditation and protection for good faith bargaining and other elements would hinder rather than help you.

Mr. ROWELL. No. 1, Mr. Chairman, we are not convinced you can legislate good faith. You have two parties engaging in a bargaining affair behind closed doors in a business office. We are not convinced that because legislation mandates it that it will take place in that room.

The Capper-Volstead Act allows broad authority for farmers to organize in whatever numbers are sufficient to bargain effectively. They are overlooked by the Secretary of Agriculture who can call them in for a hearing to testify their position in case they get so strong that they are completely out of line on pricing farm raw materials.

We feel this is enough. Why get the Government involved any deeper in a free enterprise or private enterprise system? Why should the Department be involved?

Mr. PANETTA. The example that has been presented in testimony is the processor who will not deal with the kind of cooperatives that are established by farmers. The processor says he is not going to deal with him and he will go to the large farmer and get goods at a better price and he would not have to negotiate.

That cooperative, let us say, represents smaller farmers. That usually is the situation there.

Mr. ROWELL. I notice this was in the testimony. It was said there was unequal power. I would submit to the subcommittee that the farmers and ranchers and the producers of raw material own 100 percent of the commodity and they own it first.

I would say that the processors, the buyers, are willing to buy 100 percent of that commodity. How much more fair can you get?

Mr. PANETTA. That was the basic point. There have been examples were processors have not, in fact, dealt with farm cooperative operations.

The point of the law here is to require that they at least be recognized and that there be good faith bargaining with it.

Mr. ROWELL. We have found that good faith in bargaining comes about for a couple of basic reasons. No. 1, you have to have economic strength. I do not think that will ever change, no matter what the law says. You have to be able to effect them economically.

No. 2, you have got to be able to deliver the product when you say you are going to in the quantities that you are going to and of the quality that you are going to.

This is the purpose of the NFO dispatch system. Then good faith develops.

Without those two things, I do not believe there is any way to develop good faith in bargaining.

Mr. HACKNEY. Mr. Chairman, let me shed some light from the industry standpoint on your question concerning the failure of some of the processors to deal with a collective bargaining unit.

As an industry person, it became extremely difficult to deal with any farm group which collectively assured us, as an industry that they would, in fact, sell us a certain amount of product, simply because of what Mr. Rowell has just discussed.

There was their failure to act in good faith. There was their failure to deliver properly and in the context and the size and quantity that they had agreed to deliver.

When I came into this organization, that feeling was certainly still existing among the industry.

All they needed to trade with a collective bargaining unit was the assurance that we would, in fact, act with a certain amount of professionalism and expertise in our ability to deliver.

Through that, as I discussed earlier, we have, in fact, developed contractual agreements with all of the Nation's leading packers. They are perfectly willing to do business with us as a unit because of our ability to deliver and describe properly.

Mr. PANETTA. As I understand your testimony, if this legislation were enacted, you would ask to be recognized by the Secretary under its requirements; is that correct?

Mr. ROWELL. I am sure this would be true; yes.

Mr. PANETTA. You indicate there is no need for a referendum. I think the requirements of the legislation is that it will be voluntary.

I think you testified to the effect that peer pressure would require most commodity groups to come under it. Is that not what it is all about?

You have a cooperative and they operate as a cooperative. They bring peer pressure. Is that not what the cooperative is established to do?

Mr. ROWELL. Our point is this. It is not necessary that they should be forced.

Mr. PANETTA. Then they do not have to do it. It is voluntary.

Mr. ROWELL. As a producer group, they can do it now. Why do we want to get involved under the licensing or accreditation procedure? Why do we want to get involved with another bureaucracy? It is unneeded.

Mr. PANETTA. If it is voluntary, I do not understand what the problem is.

Mr. ROWELL. The bureaucracy will be there. It is going to be active. It will be functioning.

Mr. NOLAN. If the gentleman will yield, let me say this.

It is voluntary now. People can bargain without this additional legislation; right?

Mr. ROWELL. Right.

Mr. NOLAN. Is it your opinion that sections 9, 10, and 12 of the bill would really expand the authority of the Secretary of Agriculture to impose standards, restrictions, and rules? Would any of you care to comment on your impressions of sections 9, 10, and 12 of the bill?

Mr. ROWELL. Yes, we think the type of thing that the Secretary may at any time institute an inquiry of his own opinion would be that way. My testimony goes into that.

Mr. NOLAN. In section 10 it says he is empowered to institute or he is given the authority to make and enforce and the language says "any order." That is pretty extensive authority being granted to the Secretary.

Mr. ROWELL. We think it is extensive; yes. He now has the authority to call any bargaining group into a hearing to justify the position if he feels they are getting too strong and are getting prices of raw materials out of line.

We think this is the proper authority and probably all he should need.

Mr. **Nolan**. Thank you, Mr. Chairman.

Mr. **Panetta**. Mr. Richmond.

Mr. **Richmond**. Thank you, Mr. Chairman.

Mr. Rowell, can you tell us how this would affect the consumer?

Mr. **Rowell**. It would be the cost of another bureaucracy that somebody will have to pay for. Whether it is added on to the tax burden or whether they add to the price of food, there will be an extra tax burden.

Mr. **Richmond**. Do you know what the cost will be?

Mr. **Rowell**. It will be up to the Congress as to how much they appropriated to the Department to follow the authority of the act. I really do not know.

Mr. **Richmond**. Do you feel in the end this would be good for the consumer or bad for the consumer?

Mr. **Rowell**. I just certainly do not think it can cheapen food if you put another agency in charge of handling farm raw materials. It does not sound reasonable to me that it would cheapen food.

Mr. **Richmond**. Will it in any way improve the quality or the distribution of the food?

Mr. **Rowell**. I do not see how.

Mr. **Richmond**. The bill, I thought, was organized so that the distribution system would be simplified and made more equitable and therefore, theoretically, it should help the consumer.

Mr. **Rowell**. I think we have a super food distribution system right now from the farm to the retail markets. The grocery stores have anything that anybody wants. They have it fresh and in good condition. How do you improve on that?

Mr. **Richmond**. I can tell you lots of ways to improve on it, such as growing food closer to cities.

Mr. **Rowell**. If we would not have paved all the ground, we could do that. [Laughter.]

Mr. **Richmond**. That is suburban agriculture. The country needs to develop this.

With the situation as it is today, I wonder if this bill would help improve the quality and supervise the distribution of food. That is why I am interested in your testimony.

Mr. **Rowell**. I am not prepared to say whether it would or would not. I do not know.

Mr. **Richmond**. Thank you, Mr. Chairman.

Mr. **Panetta**. Mrs. Heckler.

Mrs. **Heckler**. Thank you, Mr. Chairman.

Following up on Mr. Richmond's line of questioning, is it possible that ultimately, if this bill were enacted, that the ability, that is, that the legal requirement of compulsory arbitration could lead to the setting of prices?

Mr. **Rowell**. It is possible. If there is a Government arbitrator in the middle of the negotiating dispute, one feels it might be settled fairly. We see the results of it in other organizations. Government arbitrators are called in there.

Your judgment is as good as mine as to whether it is a fair settlement.

Mrs. HECKLER. It seems difficult for me to understand that farmers who are the most independent of all individuals in our society would want a Government agency to set the rules and regulations for them.

What does this do to the free market system?

Mr. ROWELL. In one of my opening statements, I mentioned that this is contrary to the mood of the country in general and probably more specifically to farmers. They really do not want any more Government interference in their affairs.

Mrs. HECKLER. That seems to be the point of view that they express and yet that is absolutely contradictory to the purpose of this legislation.

Mr. ROWELL. That is right. That is why we are opposing it.

Mrs. HECKLER. Do you think that most farmers would actually support this legislation?

Mr. ROWELL. I do not think they want a lot more Government interference and a new bureaucracy in the Department of Agriculture to interfere in their selling prices. I really do not feel they want it.

Mrs. HECKLER. Did not the Farm Bureau support the passage of the Agricultural Fair Practices Act of 1968?

Mr. ROWELL. You would have to ask the Farm Bureau that question. I do not know.

Mrs. HECKLER. What would your judgment be as to the effect of this bill under the standard set by the Agricultural Fair Practices Act? It would seem to me that this bill, in effect, would repeal the Fair Practices Act.

Mr. ROWELL. In the last section of the bill, I think it does, in fact, repeal the Fair Practices Act of 1967.

Mrs. HECKLER. Do you feel the handlers are guilty of unfair practices?

Mr. ROWELL. As Mr. Hackney testified, on a one-on-one basis when they send professionals out to do this every day and they deal with individual farmers, then maybe the professional is the better of the two salesmen.

I do not know whether you can call that unfair or not.

We have not found any problems in bargaining where we had a sufficient volume of product that would affect their operation if they did not get it. We have had no problems in bargaining and selling it to them.

However, we had to have the volume to affect their operation. Otherwise, they would not be interested in bargaining.

Mrs. HECKLER. Do you have any idea what the cost of this new bureaucracy would be?

Mr. ROWELL. I certainly do not.

Mrs. HECKLER. How would you see the ramifications as to how the bureaucracy itself would operate?

Mr. ROWELL. As I stated, many things could happen. You could have charges to the Department among the two bargaining groups. The Department could bring charges on their own just because they wanted to. There might not even be an outside party requesting.

So, there could be a lot of involvement by the Department that would be undesirable.

Mrs. HECKLER. Would not the final impact of this procedure, if it is followed, be the dampening of competition or actually denial of competition?

Mr. ROWELL. Yes, I think it would.

Mrs. HECKLER. What would be the ramifications for the consumer, then?

Mr. ROWELL. Whenever you start interfering with the free market system, and the collective bargaining system, then costs normally go up. I do not see any way for them to go down. If they change they would go up, I am sure.

Mrs. HECKLER. Do you feel that the current bargaining system is working.

Mr. ROWELL. Yes, I do.

Mrs. HECKLER. You have heard the charges that it is not. There are some that are excluded, that is, the small producers. Is there a way in which you can improve the bargaining procedures without creating a new Government bureaucracy to do so?

Mr. ROWELL. There certainly is. Get more farmer members into our organization and they will improve by themselves.

We have had great success up to this point and more farmers will make it better.

Mrs. HECKLER. What do you think is the support among farmers of this proposal?

Mr. ROWELL. If the farmers were acquainted with the details of this proposal, I think support would be very, very slim.

Mrs. HECKLER. You think that the majority of the American farmers who are also independent would not want this?

Mr. ROWELL. Yes, I think that is correct. I think they like the free market system.

Mrs. HECKLER. Mr. Chairman, let me say this.

We are hearing from a variety of witnesses today. This is very important. I think the panel I have heard makes some interesting points.

Those that I have not heard I will read their statements. I want them to be assured that I will look at their testimony, but I also request that this subcommittee, if it is serious about this bill, ask for some consumer witnesses because there is a definite consumer impact that would result from this legislation. I think it is terribly unbalanced not to have the consumers' point of view expressed.

Mr. PANETTA. Consumer groups have been alerted to the legislation.

Mrs. HECKLER. I have not seen their names on the list of witnesses.

Mr. PANETTA. They have been alerted to it. If they wish to testify, they can. We will contact them again, if necessary.

Mrs. HECKLER. I would hope the subcommittee would seek the insights of the consumer groups because I think there are consumer ramifications here that are quite serious.

Mr. PANETTA. Thank you. Mr. Nolan.

Mr. NOLAN. I have no questions, Mr. Chairman.

Mr. PANETTA. Mr. Rowell, let me follow up on a couple of statements. I find it a little bit contradictory that you represent a bargaining operation and you somehow say that bargaining operations under this bill would be anticompetitive. You do not consider what you do anticompetitive; do you?

Mr. ROWELL. No, I think we are on an equal basis with buyers.

Mr. PANETTA. Do you think bargaining associations are frankly a competitive part of this process? That is what you are about; right?

Mr. ROWELL. As long as it is voluntary.

Mr. PANETTA. Yes, I see.

Mr. ROWELL. As long as it is voluntary without too much interference from the Government bureaucracy; yes.

Mr. PANETTA. Let me ask you something else.

You made the criticism that somehow this proposal is terrible because it might involve increased food prices.

Is not the purpose of your organization to increase prices to farmers?

Mr. ROWELL. Certainly.

Mr. PANETTA. Are you not about that?

Mr. ROWELL. Yes.

Mr. PANETTA. You do not have anything against that; do you?

Mr. ROWELL. But should we saddle the consumer with the cost of another bureaucracy between the producer and the consumer?

Mr. PANETTA. Are you saying that you limit the prices that you get to take into consideration the impact that might be on the consumer and, therefore, a restricted price that would go to the farmer?

Mr. ROWELL. We know the increased cost has to go to the consumer. There is no question about that.

Mr. PANETTA. That is what every bargaining association knows.

Mr. ROWELL. That is right.

Mr. HACKNEY. May I interrupt?

Mr. PANETTA. Certainly.

Mr. HACKNEY. Let me clarify a point that you may have made just now.

I do not believe the objective of the National Farmers Organization or any specific bargaining group is to continue to raise food prices. I do not agree with that. I do not think that is their objective.

Their objective, in my opinion, is to give the producer the cost of this production back, plus a reasonable profit for that commodity, not to continue to escalate prices to where the consumer is totally obliterated.

Mr. PANETTA. Is not the reality the fact that because of increased price of production and the increased cost of energy that, in fact, you have the increase in price?

Mr. HACKNEY. In that context, yes, I agree. But always remember cost of production does not continue, that is, our objective is to simply raise the cost of food prices.

Mr. NOLAN. If the gentleman will yield, let me say this.

The GAO study was just completed which was ordered by this subcommittee. It showed that in the last 6 or 7 years, 87 percent of the increase in the retail cost of food was not attributable to farm prices but to marketing costs.

That keeps the record straight, I hope. It is not the farmers who are responsible for the food price inflation.

Mr. **Hackney**. That is the point I was trying to make also.

Mr. **Panetta**. Gentlemen, we want to thank you very much for your testimony.

Mr. **Rowell**. We want to thank you all.

Mr. **Panetta**. Our next witness is Mr. Noel Stuckman, general manager, Michigan Agricultural Cooperative Marketing Association.

We welcome you here, Mr. Stuckman. We appreciate your coming.

STATEMENT OF NOEL W. STUCKMAN, GENERAL MANAGER, MICHIGAN AGRICULTURAL COOPERATIVE MARKETING ASSOCIATION

I am Noel W. Stuckman, General Manager of the Michigan Agricultural Cooperative Marketing Association, with offices in Lansing, Michigan. Our association, commonly called MACMA, is a statewide multi-commodity bargaining and marketing association that has been in operation since 1961.

MACMA has over 2,500 farmer members who have voluntarily joined seven fruit and vegetable divisions of the association. We have four fruit divisions, including the Michigan Processing Apple Growers, the Red Tart Cherry Growers, Grape Growers, and Michigan Plum Growers Divisions, and three vegetable divisions including the Michigan Asparagus Growers, Kraut Cabbage Growers, and Potato Growers of Michigan Divisions. The primary activity in each of these divisions is bargaining with processors over prices, grades and other terms of trade. Members are kept informed about crop and market conditions. Each division has an elected marketing committee that represents the division membership in negotiations with handlers.

MACMA supports the enactment of H.R. 3535 and urges favorable consideration of the bill by this committee. We take this position both because of the need for the legislation and also because of our experience in Michigan operating under the provisions of a state farm bargaining law. We have found that legislation of this type is workable and will provide the sound legal basis for realistic negotiations between associations and processors.

Our association was organized because of need recognized by farmers. That was the recognition that an individual farmer had no bargaining position when dealing with a large food processor. Price or contract offers by the large multinational firms such as the H.J. Heinz Company, Campbell Soup, and Gerbers was on a "take it, or leave it" basis. So the farmers formed MACMA, went to work to get as many members as possible, and started working together as a group to counter the vast disparity of bargaining strength between themselves individually and the few buyers of their produce.

MACMA found that just an organization in itself was not sufficient to assure effective bargaining year after year. We found that some processors refused to negotiate even though our members produced large portions of those processors' raw product requirements. We were flatly told by managements of several companies that they would not recognize our association and negotiate until they were required to do so by law. Sometimes processors with which we were negotiating made the deduction of association fees an issue in negotiations and used it as a factor to get the association to agree to a lower price. We encountered all kinds of practices by processors to discourage membership in the association. We found that at times when there were negotiations that there was no way to resolve an impasse when fruit had to be harvested or when annual crops had to be planted. We deal with biological processes that cannot be stopped until price and terms of trade are established. In the fruit crops we lost most of our bargaining power once the fruit had to be delivered to the processors without a price and put into their cans and warehouses. Producers and their organizations came to the conclusion that farm bargaining legislation was the answer to these needs.

MACMA was a strong proponent of the enactment of farm bargaining legislation in the late 1960's. We realized that the Federal Agricultural Fair Practices Act of 1967 wasn't going to provide much of a legal basis for effectively dealing with the buyers of processing fruits and vegetables. We supported the various Sisk bills in Congress in the 1970's. We also worked in support of a bill in the Michigan Legislature in 1972. That proposed legislation was enacted into law and became effective in 1973.

While in the Michigan Legislature, the bill was bitterly opposed by those who buy what farmers have to sell, particularly by the fruit and vegetable processors, as the scope of our law is limited to those commodities. The active support of farmers and their organizations convinced the Michigan Legislature of the need for the act. Please recognize our Legislature is predominantly composed of Legislators from the urban areas. They supported the rights of farmers to organize and bargain collectively. They were not persuaded by the opponents' arguments that food prices would increase or that processors would leave the state.

The Michigan Agricultural Marketing and Bargaining Act, commonly known as P.A. 344, has actually gone through the Michigan Legislature twice. When the bill was initially passed in 1972, the Legislature recognized that it was experimental legislation and placed in it a September 1, 1976 expiration date. The Legislature removed the expiration date by overwhelming votes in both the Senate and the House of Representatives, after considerable input by both proponents and opponents of the law.

I will not take the time to describe the Michigan Act, as it is not the subject of this hearing. It does contain many of the provisions which are in H.R. 3535 and also some provisions which are not in the bill under consideration here today.

What is important to this committee, I believe, is the wealth of experience that has been gained in Michigan to date. Five MACMA divisions have been accredited to represent producers of processing asparagus, processing red tart cherries, processing apples, potatoes for freezing, and kraut cabbage. Processors are required to negotiate with these accredited associations. Negotiations have been conducted under all kinds of crop and market conditions during the six years of asparagus negotiations, five years each of apple and kraut cabbage negotiations, and one year each of red tart cherry and potato negotiations. During these years, over 350 agreements were reached through negotiations between accredited associations and handlers. Settlement by arbitration occurred 15 times.

I believe that six years of experience is a fair test of the workability of the Michigan farm bargaining law. Farm prices have not automatically increased from year to year as some buyers had feared and as some farmers had hoped. Supply, demand, and market prospects have influenced the price levels each year. For example, the 1975 crop year was one of large crops, excessive processor inventories carried over from the previous year, and the resultant raw product prices below some producers' costs of production. On the other hand, the 1976 and 1977 crops were short, there was little carryover, and several record high raw product prices were established. The 1978 apple crop was the largest ever in Michigan and it was priced and marketed advantageously, using the base price agreement concept that works well in our processing apple and asparagus industry.

The Michigan experience has been, in summary, a fair and equitable price discovery process. The determination of prices and terms of trade is a mutual problem for both processors and growers each year. The Michigan law provides the procedures through which accredited associations and the processors discover raw product values. The legislation is in the public interest because it facilitates the economic health of the fruit and vegetable industry in Michigan. This is in the long run interest of consumers as it assures that the industry will in the future continue to provide products desired for varied diet of various foods.

Even though we have state farm bargaining legislation available to farmers in Michigan, our association supports the enactment of H.R. 3535. We take this position not because our state law is in itself deficient in any manner, but in several aspects the availability of national legislation would be both directly and indirectly beneficial to Michigan farmers.

We recognize that Michigan is not a separate entity unto itself in both being a market for food to consumers and a source of raw products for processors. The state is a part of the national market. It is not the only state where commodities can be grown. Michigan is the Number One producing state for red tart cherries, blueberries, navy beans, and pickling cucumbers; Number Two in sweet cherries, purple plums; and Number Three in apples, asparagus and celery. Processors come to Michigan to buy these commodities because Michigan farmers produce them every year, efficiently, and generally in the quantity needed by processors.

We strongly believe that farmers and their marketing associations all over the Unite
States should have the provisions of national farm bargaining legislation available
for their use if they desire. This would put all bargaining associations involved i
marketing a particular commodity on an equal basis.

Another positive aspect of having national legislation is the accommodation of produ
areas which cross state boundaries. For many commodities there are separate distinc
production areas in different locations in the United States. Each production area
its own unique varieties raised, costs of production, yields produced, cultural practi
and utilization of the raw product. Often these production areas extend into two or
more states. An example of this is the processing tomato production area centered i
northern Ohio. Southeast Michigan, and Northeast Indiana is a part of this producti
area. Ohio based processors contract with Michigan and Indiana growers, as well as
Onio growers. These tomatoes then go to Ohio to be processed. Michigan has a compr
hensive state farm bargaining law. Ohio also has a state farm bargaining law, but t
law does not have certain provisions which are in the Michigan law. Indiana does no
have a state law. The growers in the production area have an association with membe
in the three states. This situation would be confusing and complicated if an attemp
was made to utilize the provisions of the Ohio and Michigan laws. The best alternat
would be national legislation and the accreditation of the association under its pro
visions. Growers and processors in the area would be on a uniform basis.

Although our association has been a proponent of the enactment of farm bargaining le
lation in states where the marketing and pricing of agricultural commodities can be
facilitated by cooperative bargaining associations, we believe that the passage of
national farm bargaining legislation is preferable to each state having a farm barga
law. Michigan, Minnesota, Maine, Ohio and California have in recent years enacted s
laws. The primary provision in each law is the same, that is that processors are
required to recognize and bargain in good faith with bargaining associations, but th
other provisions of the state laws vary considerably from state to state. Bills hav
recently considered in the state legislatures in New York, Pennsylvania, and Idaho w
proposed bills being developed for introduction in several other states.

In closing, I wish to reaffirm our support for H. R. 3535 and urge favorable consi
by this committee. If the commiteee wishes further information about the experience
our association under the provisions of the Michigan act, I would be most happy to
provide any information requested.

Thank You.

# # # # #

Mr. Panetta. Thank you.

We appreciate your testimony. Obviously the experience of the Michigan law is helpful to us.

The Michigan law only covers particular crops in the fresh fruit and vegetable area; is that correct?

Mr. Stuckman. Yes.

Mr. Panetta. When it was initially proposed, did it cover all agricultural products?

Mr. Stuckman. Yes, it was all inclusive upon introduction.

Mr. Panetta. I take it, then, that the decision of the legislature was to exempt various other commodities, such as wheat and corn?

Mr. Stuckman. Yes. During the legislative process, we exempted out certain commodities and then in the last version, limited it to perishable fruits and vegetables.

This was primarily because that section of Michigan agriculture contained the greatest proponents. The most need was exhibited at that point in time.

Mr. Panetta. The process itself, since it has been put into effect in Michigan, has how many complaints, that is, either gone to arbitration or had the requirement that the Department get involved in trying to resolve the differences?

Mr. Stuckman. Not a lot of complaints.

Mr. Panetta. Do you have any numbers?

Mr. Stuckman. I do not have numbers. The administrator could provide those numbers, but it has actually been minimal. On the issue of good faith bargaining, that has not been a problem.

The thing that we found was this. The processors in Michigan understand good faith bargaining because they deal with organized labor in their plants. Their attorneys understand it. We have really had no problem insofar as what good faith bargaining means.

Mr. Panetta. You do have an arbitration process that is set up under Michigan law?

Mr. Stuckman. Yes, there is. It is a three-member joint settlement committee with the final offer selection method.

Mr. Panetta. Do you know how many cooperatives have been approved by the administrator as a result of the passage of this legislation?

Mr. Stuckman. The five MACMA divisions are the only ones that have been accredited. The Agricultural Marketing and Bargaining Board administers the act. They have three additional bargaining units.

The interesting fact is that the existence of the law and the processors who buy commodities other than those that are under accreditation, take that into cognizance. It does impact the establishment of prices and the like. The Michigan law, in itself, has had far more reaching effects on the industry than just the divisions of MACMA that have received accreditation.

We do have other cooperative marketing associations in the State, like the Michigan Blueberry Growers Association and the Michigan Celery Growers Association and several others. They receive an indirect benefit, in my opinion, from the existence of the law.

Mr. Panetta. Are all of these State-wide bargaining associations?

Mr. **Stuckman**. Yes, in Michigan they are.

Mr. **Panetta**. So when you deal with a particular product it is State-wide? You do not have it broken down between North and South?

Mr. **Stuckman**. No.

Mr. **Panetta**. Is that required under the law or is that just the way it is worked out?

Mr. **Stuckman**. That is just the way it was worked. There could be regional associations within the State. They could be accredited under the law.

Mr. **Panetta**. Well, I want to thank you very much for your testimony.

Our next witness is Mr. Jack Hayes, vice president, California Tomato Growers Association.

On behalf of the subcommittee, let me welcome you here. It is always nice to have somebody from my home area to come testify, particularly on this kind of legislation.

We welcome you here and we look forward to hearing your testimony.

STATEMENT OF JACK HAYES, VICE PRESIDENT, CALIFORNIA TOMATO GROWERS

Mr. **Hayes**. Thank you, Mr. Chairman.

I have filed a long statement with the committee. I will summarize my remarks.

Mr. **Panetta**. Without objection, your written testimony, in its entirety, will be inserted in the record.

Mr. **Hayes**. My name is Jack Hayes and I am a diversified farmer from King City, Calif., which is located in southern Monterey County.

I am also a vice president of California Tomato Growers Association which was formed more than 30 years ago and represents approximately 70 percent of the tomato growers of the State.

We have been involved in formal bargaining with processors for price and contract terms during the past 5 years and I have acted in the capacity as chief negotiator for the growers with the title of vice president of bargaining.

California annually produces from 6 million to 7 million tons of processing tomatoes from which 27 canners pack 85 percent of the Nation's supply of canned tomatoes and tomato products. Tomatoes are by far the largest of the California canned commodities and are of great economic importance to the State.

We have been engaged in formal bargaining with canners for price and contract terms only since 1974, but our desire to bargain preceded that date by many years.

The development of mechanical harvesters in the late 1960's brought rapid change to the California tomato industry which turned virtually overnight from labor intensive to capital intensive with large investments in equipment and low returns on the crop, tomato growers decided in the early 1970's that it was imperative to add price bargaining to its list of services to its members.

Had we had H.R. 3535 and its provisions for accreditation and the definitions of good faith bargaining at that time, our decision could have culminated in formal bargaining much earlier and much easier.

Although we met all of the criteria for accreditation contained in the bill, California Tomato Growers Association found it necessary to spend from 1970 to 1974 attempting to gain recognition by processors as the bargaining agent for tomato growers.

If our association had this much difficulty in achieving recognition, you can well imagine the problems of growers of commodities of less magnitude.

H.R. 3535 also gives us some badly needed definitions of unfair practices. Canners are completely in control of the tonnage they will buy in any given year, as well as the growers from whom they will buy it.

Thus, they possess a powerful economic weapon, since any grower will tell you that the desire for a "home" for his production is his primary concern. Discrimination against association members takes many subtle forms and coercion to terminate a membership agreement can be equally subtle.

At present, most growers are unwilling to testify in court to acts of discrimination or coercion because of their fear of losing their home.

We, of California Tomato Growers Association, do not intend to use the mediation and arbitration procedures included in H.R. 3535 in an attempt to settle all of our differences with processors.

As responsible bargainers, we feel that restoring to mediation and arbitration should be used only as a last resort.

But the very fact that this bill exists will prevent the more flagrant practices of processors, just as the provisions of S. 109, which requires handlers to bargain in good faith with producers has put at least a veneer of compliance with the provisions when processors meet to talk with us.

However, it is obvious that S. 109 did not go far enough in its protection, since to my knowledge it as never been tested in court.

If we are to remain a Nation of abundant food at relatively low cost, we must find means to protect the grower of that food. One way that can be accomplished is to give some greater measure of protection to his association which provides economic strength for the individual grower.

On behalf of the members of California Tomato Growers Association, and in addition, the cling peach, freestone peach, pear, prune, apricot, raisin growers, and the Vegetable Bargaining Association of California, among others, all of whom support this legislation, I urge your favorable consideration of H.R. 3535.

Thank you.

Mr. PANETTA. Thank you.

We appreciate your testimony.

Under present law in California, there is a law that deals with fair bargaining. I assume that has not proven to be sufficient protection.

Why is that?

Mr. HAYES. It does not go far enough. The Fair Practices Act of 1963 in California, which the 1967 act in the Congress is patterned after, we presently have our first lawsuit against a major processor. It has been going on for 3 years. We still are not in court. There is not enough protection for individual growers.

So, they have refused to testify even though they have forced, over a 3-year period, all of our members out of delivery to that particular processor.

In addition, the penalties are too weak. In effect, we have no equity under the law. Really, that is what we are looking for here. In extreme cases we want to get a stronger law to give some degree of equity to the producer-processor equation.

Mr. PANETTA. The example that you made reference to is obviously one of the reasons this legislation was developed. Could you expand on what happened in that instance and what the problem was?

Mr. HAYES. The processor decided to go in what they call a participating program where the grower has no right to examine a processor's books. They were offering to buy tomatoes at 85 percent of established market value. During the 3 years that this has been in effect, they have offered only 90 percent final payout.

In addition, they offered that situation to our members, but to nonmembers they offered an open contract subject to the final established price.

There are a variety of other ramifications, but all of this was not only disruptive to our members, but disruptive to the market place and disruptive to orderly pricing and orderly contract terms. There was the dissatisfaction also among growers as to the ability of the law to protect them. That is a key element.

Mr. PANETTA. In that instance, did the processor do that on the basis that the bargaining association had been formed, or was it based on the quality of product that was provided?

Mr. HAYES. In the California tomato industry, we have third party grade, controlled by the State inspection service. Our quality has continued to improve. It is monitored load by load so that quality was not an aspect. It was strictly, I believe, a matter to circumvent the association and attempt to buy the product at a lower price than what the competition had.

Mr. PANETTA. We thank you very much for your testimony, Mr. Hayes.

[The prepared statement of Mr. Hayes follows:]

STATEMENT OF JACK HAYES
VICE PRESIDENT, CALIFORNIA TOMATO GROWERS ASSOCIATION
Before the House Agriculture Subcommittee on
Domestic Marketing, Consumer Relations and Nutrition
July 10, 1979

My name is Jack Hayes and I am a grower from King City, California, which is located in southern Monterey County. I am also a vice president of California Tomato Growers Association which represents approximately 70 percent of the tomato growers of the state. Although the association was formed more than 30 years ago, we have been involved in formal bargaining with processors for price and contract terms only over the past 5 years. At the time we began formal bargaining, I was president of the association and have continued in the capacity as chief negotiator for the growers with the title of vice president of bargaining.

I mentioned that we have been engaged in formal bargaining with processors only since 1974. But our desire to bargain preceded that date by many years--years in which our association would have been assisted immeasurably by the provisions of HR 3535.

During the 1960s, we felt that it would be extremely difficult to bargain for price on an annual crop in which there were many small growers who were dependent on hand labor and who could get in and out of the business at will. With the development and quick adoption of machines to harvest tomatoes in the late '60s, the California tomato industry changed rapidly from labor intensive to capital intensive and the composition of the grower segment also changed. The tomato grower of today is a specialist in a high risk-high cost crop and he is as committed to the annual production of processing tomatoes as is the grower of a perennial crop.

With large investments in equipment (and incidentally, the cost of a tomato harvester today is about $150,000) and low returns on the crop, tomato growers decided in the early '70s that it was imperative to use the vehicle of the association to bargain for price with processors. Had we had HR 3535 with its provisions for accreditation and definitions of good faith bargaining at that time, our decision could have culminated in formal bargaining much earlier and much easier. Although we met all the criteria contained in the bill, California Tomato Growers Association found it necessary to spend from 1970 to 1974 attempting to gain recognition as the bargaining agent for tomato growers from California processors.

Realizing that the potential for production was tremendously enhanced by mechanization of the tomato industry and that growers would face even lower prices for a crop which could be in perennial oversupply, the association, in 1970, sought a state market order which included a form of tonnage limitation. Following months of hearings in Sacramento, in which the order was strenuously opposed by processors, the order was issued for a vote at the same time growers were harvesting.

Canners have subtle methods of achieving their purposes and in this instance, they chose to increase the price per ton by $3 and to contract at the earliest date in history. The strategy worked. Growers failed to approve the market order and for the next two years the price remained at $28 per ton - a price, incidentally, that would return a profit only if a grower happened to be fortunate enough to get a yield per acre above the statewide average of tons per acre.

In 1972, association members realized that if they were to remain in the business of producing processing tomatoes, it would be necessary to band together and bargain with processors. A new membership agreement was developed by the association which included bargaining for price and contract terms and the signing of members to the agreement began.

When canners found growers seriously organizing to bargain, they again brought out their most effective weapon - money - to interrupt the effort. The 1973 price rose to $35 per ton from the previous year's $28, but the move was not as effective this time as it had been previously. It slowed our bargaining sign-up, but it didn't stop it. By the fall of that year, we had three of our tomato production districts signed with a sufficient number of growers to become the nucleus of the association's bargaining group. I was authorized by the board to act as the chief bargaining agent with processors. The only problem was that the processors didn't want to meet with us and used any sort of excuse for delaying any meetings while they sent their fieldmen out to sign non-member growers to determine how much acreage they could contract without having to deal with us.

Fortunately, it was a year when growers had many alternative crops to choose from and the sign-up for association bargaining members continued to grow as their anxiety to get a tomato contract was alleviated by their alternatives.

One of our larger processors finally decided to recognize the association as the bargaining agent and came to agreement on price early in the following year. However, our major factor, for reasons of his own, continued to fight recognition of the association and added $5 to the $50 per ton that had been agreed to in order to try to buy his requirements without dealing with the association. The result was that the industry went from $50 to $55 per ton and the association was firmly established as the bargaining agent for growers.

Although much of this recitation of our problems may seem to be ancient history to you, I believe it underscores the need for HR 3535 by growers. Processing tomatoes represent the largest and most important commodity in the packs of California canners. About 85 percent of the total supply of tomatoes and tomato products in the United States is produced in California, and as I stated earlier, California Tomato Growers Association represents 70 percent of the grower segment. If our association had this much difficulty in achieving recognition by processors, you can well imagine the problems of growers of commodities of less magnitude.

We are extremely proud of what we have been able to accomplish since 1974 on behalf of growers. However, our problems certainly were not over when we achieved recognition. Our bargaining agreement with our members specifically forbids any member to sign a contract with a canner who has not come to agreement with the association on price and contract terms in a specific year. Price and terms are negotiated annually by the association and the procedure has virtually become a year around activity. Although our 1979 harvest has only begun, we have already started preliminary talks with canners on the 1980 crop. Price bargaining is not taken lightly by the association and agreement on the price with the major canners usually comes only after months of negotiation between both parties to the agreement.

The philosophy under which the association has always bargained is to provide a reasonable return to the average grower. Our goal is to achieve this on a long term basis and to provide stability to the California tomato industry by leveling out the economic peaks and valleys. Some of our major processors have long operated on the basis that the way to control production is through price. It is our often-stated belief that processors, rather than using price as a production determinant, must be responsible in contracting for their requirements, since they are completely in control of the tonnage they will buy in any given year, as well as the growers from whom they will buy it.

This control provides a powerful economic weapon to the processors, since as the grower of any commodity will tell you, the desire for a "home" for his production is his primary concern. HR 3535 gives us some badly needed definitions of unfair practices employed by processors. Discrimination against association members takes many subtle forms and coercion to terminate a membership agreement can be equally subtle. None of our association members currently holds a contract with one sizable California processor, now owned by a large conglomerate, with whom we formerly did business. This processor has contracted his requirements outside the association membership, since the association refused to agree to his contract which calls for payment of 85 percent of the association price on 80 percent of his contracted tonnage, with the remaining 15 percent of the price allocated on a participating "profit sharing" basis, if there is any profit. In none of the three years that the processors has used some form of this type of contracting has he paid 100 percent of the price negotiated by the association with the remainder of the state's processors. Why do growers sign this contract? Because of the desire for a "home" and the belief that somehow they can get a yield per acre sufficiently large to allow them to break even. Needless to say, it has cost us membership among those growers who want to sign such a contract.

This past year, the association was able to achieve what we believed would be a long step forward toward our goal of industry stability when we signed a three year term contract with a major processor which called for a base price with a sliding scale related to net #1 tonnage purchased by the processors, and a formula for determining price in the following two years of the three year contract. This agreement, which followed only after an in-depth study of the terms, found acceptance by several of the processors. However, the largest factor in the California tomato industry found it totally unacceptable and took some very effective steps to make sure that his position would be forced on the industry.

In a letter addressed to the association, this processor stated, "Due to surplus acreage in all growing locations, and keen grower interest in contracting with Hunt-Wesson, we are unable to protect or save tonnage for any grower unwilling to sign a contract. Obviously, any delay of CTGA members in securing authorizations to sign contracts increases their risk of loss of tonnage that Hunt-Wesson can allocate to them."

When news of this action got to our members, and you may be sure that the processor's fieldmen saw that the news got out immediately, our phones began ringing off the hook. Growers were begging us to come to agreement with the processor on his terms before they lost their acreage. Obviously, there was little we could do but abandon our term contract and settle for the Hunt contract on a one year basis and at $1 less than the base price we had negotiated previously. Had we not done so, our association would have been torn apart and our great gains in bargaining would have been destroyed.

I cite these actions only as examples of the type of coercion and intimidation that take place. I am sure you realize there are many others, which I, or my grower colleagues here today, could give.

We, of California Tomato Growers Association, do not intend to use the mediation and arbitration procedures included in HR 3535 in an attempt to settle all of our differences with processors. As responsible bargainers, we feel that resorting to mediation and arbitration should be used only as a last resort. But the very fact that these provisions are included in the proposed legislation will prevent some of the more flagrant practices of processors, just as the provisions of S 109, which requires handlers to bargain in good faith with producers has at least put a veneer of compliance with the provisions when processors meet to talk with us. However, it is obvious that S 109 did not go far enough in its protection, since to my knowledge it has never been tested in court.

We know from our experience that this bill will be strongly opposed by handlers who are unwilling to relinquish any measure of their economic stranglehold on their suppliers. Growers, in their overriding concern to make sure they have a buyer for their production, are easy prey to handlers who can use tactics which are now merely unethical to threaten loss of a sale, but which will become illegal under the provisions of this bill.

If we are to remain a nation of abundant food at relatively low cost, we must find means to protect the grower of that food. One way that can be accomplished is to give some greater measure of protection to his association which provides economic strength for the individual grower. On behalf of the members of California Tomato Growers Association, I urge your favorable consideration of HR 3535. Thank you.

Mr. **Panetta**. Our next witness is Mr. Orville Carver who is with the Idaho Farm Bureau Marketing Association.

Mr. Carver, we want to welcome you. We appreciate your coming to testify.

STATEMENT OF ORVILLE CARVER, MANAGER, SWEET CORN DIVISION, IDAHO FARM BUREAU MARKETING ASSOCIATION

Mr. **Carver**. Thank you, Mr. Chairman.

My name is Orville Carver. I am manager of the Sweet Corn Division of the Farm Bureau Marketing Association of Idaho.

I am representing the corn growers of southeastern Oregon and southwestern Idaho who grow approximately 13,000 acres of sweet corn for canning and freezing. Our association deals with three food processors in that area.

I am also speaking for several other bargaining associations in the Northwest, particularly Central Washington Farm Crop Association, Asparagus Growers, and the Magic Valley Vegetable Growers of central Idaho. Some of those people could not be here.

For 30 of the last 40 years I have worked between growers and processors, as manager of the Growers Bargaining Association and field manager for the processing company. I am well acquainted with many of the problems of producers and their buyers.

I will try to represent growers here today in such a manner that we can assist them in the solution to some of their very complex marketing problems.

First, I would like to take a minute to establish some very basic premises. Who should control agriculture? Do we want to go to a completely open market system of 40 years ago where nearly all producers performed all of their functions? I am talking about producing, processing, marketing, and so on.

Or, should we have a vertically controlled agriculture where the production is controlled by corporations vertically integrated from the top down, or by cooperatives which vertically control from the bottom up? Should we have agriculture administered by government?

Or, should we develop and refine the system similar to our present one where producers will produce, where processors process, with a minimum of Government influence on the marketing and regulatory functions?

It is my opinion that one of the first things growers must do is to produce what the markets can absorb. The best way I know to do this is by forward contracting.

Producers and processors alike must be able to negotiate these contracts fairly in the climate in which contracts could really be negotiated would encourage more forward contracting and more orderly marketing.

In our particular area, one of the things that growers are frequently asked when they go in for financing is: Do you have a contract? There has been a tendency on the part of some finance people to require this.

Here again, a former witness testified that it is a subtle arrangement. It might not be a requirement, but the question is asked: Do you have one?

There have been some indications of growers subtly being expected to take a contract that is not too desirable, simply because it is a contract.

Growers must have some method of enhancing their marketing strength over other than by striking. Several connotations have been made here that if we had all of the product, that we could get out price if we control enough product.

I cannot quite agree with that. If we had all of the growers under one organization and if we did control all of the product, we still would have the ability in this country to produce more than we need, more than we can eat, and more than we can export. What would we do with the rest of it?

My experience of seeing growers trying to withhold a product after it has been produced seems to be about as effective as deciding that you do not want to raise a colt when your mare is 9 months pregnant.

It seems to me to have rules set up by which to negotiate contract terms is as fair as having a set of rules for playing football. Can you imagine watching a contest where only one team is governed by rules?

I have been an observer and active participant in this type of contest for nearly 30 years. If we are going to maintain our present form of agricultural production, we must develop some means for growers to reflect production costs at the marketplace. Growers have fixed costs the same as any other business.

I firmly believe in the concept of forward contracting, but until we can develop some procedure for negotiating contracts more fairly, then growers are not encouraged to contract.

Our present system of agriculture has proven to be the most efficient, most economical method of producing food anywhere in the world.

We, as an association, have had very little problem in talking with our buyers. We have not had an indication for many years where buyers would not talk with us.

That is one of the problems that there is—they just want to talk. We have been able to do much real negotiating, except in 1974 which was a magic year for growers in our area. The price of wheat went up and there was competition for acres. There was a world food scarcity. Buyers scurried for every available acre.

We need some way to bring the talking to a conclusion.

In our particular case, we talked with our buyers. Most of our contracting is done prior to planting, which usually takes place in the spring. We do our negotiating, such as it is, from January to planting time, which is usually March, April, and May.

We need some way to bring this talking to a conclusion. We have had this experience. We talk and we talk. When the sun shines our growers have to go to the field and the negotiations are all over.

This is not real negotiation.

I feel an urgent need for this legislation which will establish more equitable rules for negotiating the contracts. Most of the contracts offered are on a take it or leave it basis. Growers have little input.

We branched out in our association this last year and included high moisture corn for feed grain in our contract.

We developed our own contract. The cattle feeders came to us for acreage, and we developed our own contract. To my knowledge, this is the first time in history that growers have developed a contract and given it to a buyer to sign.

We did that. We did it again this year, but we lost one buyer.

It is my feeling that we must protect our individually owned and operated farms. They are the only reliable source of a stable food supply.

I have put together a little demonstration that shows you what effect we have on the market. There have been numerous references made to the inflationary part of this legislation as to what it would do. It is not like growers needing a 30-percent increase in their prices. Nothing like that is needed. We need a way to negotiate fair contracts.

I have a tin can here which represents a 303 size can of corn. That is the same size can that is used for peas. My tapes here are not exactly accurate in size, but let me show you what I mean.

The bottom part [indicating] would represent the growers' share which in a can of corn, costing about 45 cents, gives the growers' share as between 4 and 5 cents for the total contents, depending on what part of the country he is in.

The yellow layer represents the cost of the can, which increased, as near as I can tell, from 8.5 cents last year to 9 or 10 cents. This depends, of course, on acquisition costs.

The red portion indicates the processing costs. Here again, I have no way of knowing those exactly other than to say that they represent about half the cost of the 45-cent can of corn.

We did a little survey a year ago during our negotiating period. We found that between two stores six blocks apart in my hometown, we found as much difference as 5¾ cents for the same can of corn and the same label and the same company and the same size can and the same grade.

This is three-quarters of a cent more than our growers received for the total product in the can. At that time the can cost 8.5 cents.

We did another survey and found as much as 8 cents difference between two stores in different towns, but of the same chain for the same grade and same label and same quality and same size can.

I cannot see this. Let me reiterate. We are not talking about a 30-percent increase.

If the consumer paid 1 or 2 cents more per can of our product and that only were reflected back to us, then that could increase our return to the crop by $10 to $15 a ton. We do not even need $10 to $15 a ton. We need $5 or $6, but we need some way to continue to reflect our increased production costs on to what we receive.

Our growers are receiving less for corn than they did in 1974. There is no need to say it. We all know what production costs have gone to.

In 1974, that was the first year, in my history of bargaining, when the raw product was worth more than the can. I do not think this is a very good commentary on people who are supposed to know how to run businesses.

I would be glad to answer any questions, Mr. Chairman.

Mr. PANETTA. I want to thank you for your testimony. I appreciate your coming from as far away as you did.

Congressman Symms wanted to be here, but he has other commitments with other committees. He wanted me to convey his regards to you.

Does Idaho have a fair bargaining bill of any kind, or a fair bargaining law?

Mr. CARVER. No.

Mr. PANETTA. Has there been an effort to get it through the legislature?

Mr. CARVER. We started last year. It was started late and it was an abortive effect. But here again I would be quick to concur, Mr. Chairman, that a national law is quite desirable. In our particular case, as I mentioned, I represent growers in both States. There is the Snake River running between us. It is the same kind of agriculture and the same climate. We have processors doing business in both States.

I think it is probable that we could get a bargaining law passed in Idaho, but it might be difficult to get one passed in Oregon.

Under those conditions, it might not be to our best interest to have one in Idaho because, in some cases, it would have to be quite inoperative. It would be somewhat ineffective because our buyers would not have to buy under Idaho law and could go to Oregon and so on.

Mr. PANETTA. As for the processors that you negotiate with for price, do a majority of them bargain in good faith? Or, do you have problems with all of them or part of them? What numbers of problems are we talking about?

Mr. CARVER. We do not have any problems at all in talking good faith. They talk until the sun shines. We do not have a bit of problem that way.

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I have been on the processing side of this thing for 10 or 15 years. I have personal acqaintances in the processing field.

They are real good to talk, but when it comes down to effective bargaining, and when it comes down to pricing, they say: "No, we will not pay."

Two years ago we were only $1.50 a ton apart with a processor in our area. As of about Wednesday, they said they would give us until Monday to accept the terms or they would go around us.

Some of our growers wanted to hold tight and try them out. We did and they did. Our association members lost several thousand acres of production.

Those growers who picked up the production are crying because the price is not what it ought to be.

I am not concerned about the inflation factor. Growers walk a thin line. We do not want a big price for our product because as soon as we get one of these products up to where it is enticing, then them guys from Washington will be out there farming. We do not need you. We have enough farmers.

Mr. **Panetta**. When the processor deals with you, that is, with the bargaining association, the leverage he has to go around the bargaining association directly to the individual farmers is the tool that can be used; right?

Mr. **Carver**. Yes. There have been several instances——

Mr. **Panetta**. An offer of a better price?

Mr. **Carver**. No, not a better price necessarily.

Mr. **Panetta**. Do the rules of your bargaining association allow growers to make separate contracts with processors?

Mr. **Carver**. No; the association speaks for the members of the association.

Mr. **Panetta**. Members are supposed to hang tight with the association?

Mr. **Carver**. Yes.

This has not been a real problem. There comes a point where there is no real advantage to belong to an association because someone else gets just as good treatment.

Mr. **Panetta**. If the farmers will hang together in an association, where else can that processor go? Let us assume they are dealing with an association that represents the bulk of the farmers in that area. Let us say the farmers stand by the offer by the association. What does that processor do in that instance?

Mr. **Carver**. In that particular area, this becomes a problem because it is numerically an impossibility to have all farmers belong to an association. For the crops we grow, they can be grown most anywhere. That happened a couple of years ago.

A company that went around us took some acreage that was somewhat undesirable. They have come back this year and offered that same acreage that they took away from our growers back to our growers.

The big problem is that we just do not have some way to negotiate. I personally believe that until we get some way to bring the talking to a conclusion that we have not arrived at anything. We do not have any trouble talking.

Mr. **Panetta**. Mr. Carver, I thank you very much. I appreciate your taking the time to testify.

Our next witness is Mr. Arthur Ashley, Agricultural Bargaining Council from the State of Maine.

We want to thank you for coming to testify, Mr. Ashley.

We welcome you and you may proceed.

[The statement of Mr. Ashley follows:]

STATEMENT OF JACK ASHLEY, AGRICULTURAL BARGAINING COUNCIL, PRESQUE ISLE, MAINE

Chairman Richmond and honorable members of the committee:

My name is Jack Ashley. I live in Presque Isle, Maine on a farm where I grow processing potatoes for a living. At the present time I also have the privilege of serving as president of the Maine Agricultural Bargaining Council which is commonly referred to in the potato business as A.B.C., and was formed solely for the purpose of negotating contracts with Maine potato processors. I also serve as a member of the Potato Marketing Association of North America which is a collation of potato bargaining associations from the fall producing states and the Canadian provinces.

The processing industry as far as potatoes are concerned started in Maine some time shortly after World War II in a small way and about 1961 took a serous upturn in volume when a very large new plant was built in my home town and has continued to grow gradually up to the present time.

About ten years ago it became apparent that farmers were in need of an organization to effectively bargain for their produce with these large buyers. As a result A.B.C. was formed with only a small nucleus of growers, and the first attempts at negotiating a pre-season contract began. Limited success was accomplished and each year the membership increased until presently 726 farmers are members of A.B.C. Roughly 90 percent of the processing potatoes grown in Maine were produced by A.B.C. members in 1978.

About 1972 the poultry farmers in central and southern Maine realizing the need for legislation concerning bargaining with food processors initated a move to obtain a law governing the bargaining process. After lengthly crowded hearings and due process the bill became law and is known as the Maine Agricultural Marketing and Bargaining Act of 1973.

Unfortuately by the time the law went into effect it was of no value to the poultry people who had first demanded it. The growers were so integrated with the processors by that time they either could not or did not dare to organize in numbers sufficent to obtain accreditation under the law.

I have attached a copy of the Maine law with my remarks and you will be able to recognize the similarity between this and the so-called Sisk Bill (circa 1970) and the present bill being heard today. This law has worked well for the potato industry in Maine both for the processor and the producer. Working together writing contracts to ensure better quality potatoes for processing has benefitted both parties as an end result. Contracts have been tailored in such a way that base prices are low but high bonuses or incentives are placed on quality criteria such as fry color, specific gravity and size. This means a product that demands a better price and both sides emerge as winners. Although serious doubts and fears were voiced by Maine buyers before the enactment of the law they now tell how well it has worked. We at A.B.C. have become more aware of the market pressures they face and the need they have for quality while they in turn have come to more fully recognize our problems on the production level. To quote the chief of the procurement department of one of our largest companies,"How much better it is to negotiate with 4 or 5 well informed people than with 210 individuals!"

My only other comment on the Maine law would be that only once since its enactment has it been necessary to appeal to the State Bargaining Board. That was this past spring when our largest processor did not in fact bargain in good faith despite the fact that 13 meetings were held. Immediately after the appeal was made a contract was settled with just two meetings, and before the Board was able to hold a hearing on the issue.

Now to address the issue at hand which is HR 3535 presented by Mr. Panetta--the sO-called National Farm Bargaining Act of 1979.

Although state laws are fine they are also limited and a federal law would be more in tune with the needs of the processed food industry. Many companies at least in the potato industry, have multi-state operations and procure raw material over wide areas. Without national legislation the bargaining process is seriously hampered in many respects. It is only human nature for a buyer to take advantage of unorganized producers in nearby states. The bill's enactment is important to encourage farmers to join together before desperation sets in and over reaction occurs. Although independent by nature farmers must recognize their lack of bargaining ability as individuals if they are to realize their fair share of the returns from todays sophisticated food industry.

I would cite my own case if I may, I grow about 200 acres each year which is more than twice the average Maine potato farmers plant and care for. One Maine plant uses twice as many potatoes each week as I produce in a year. The largest grower in Maine could not supply this same company for a ten day period. You can readily see how futile it is for one farmer to stand alone. In reality he stands alone with hat in hand. Lack of organization can easily result in any class of farmers finding themselves in the plight of the poultry producers I mentioned earlier.

Failure to enact a fair law on a national level can result in a situation of over reaction such as has recently occured in our neighboring province of New Brunswick, Canada where in desperation a bargaining bill was introduced into their legislative process, and is now law that is so all encompassing and stringent to be unrealistic and unfair to both buyer and seller.

In closing I would only say that I respectfully urge you to give HR 3535 an ought to pass report, and work diligently for its enactment. I consider it to be a fair, workable and much needed piece of legislation. I and the members of A.B.C. thank you for the privilege of addressing this issue here today. Thank you.

Mr. **Panetta.** Thank you very much, Mr. Ashley.

We appreciate your coming to testify.

Your testimony basically supports enactment of this type of legislation because of experience you have had with a similar proposal in Maine; is that correct?

Mr. **Ashley.** That is correct.

Mr. **Panetta.** We want to thank you for your testimony. We appreciate it.

We will proceed with our next witness.

We will call now Mr. Charles Kingston, our last witness.

We welcome you here today. You may proceed.

[The statement of Mr. Kingston follows:]

STATEMENT OF CHARLES C. KINGSTON, MUSSELMAN'S FRUIT PRODUCTS, PET INCORPORATED, BIGLERVILLE, PA.

Chairman Richmond, Members of the Committee,

I want to thank you for the opportunity to testify before the committee this morning, enabling me to express our opinions to you regarding Agricultural Bargaining.

I am Charles C. Kingston, representing Musselman Fruit Products, Pet Incorporated, located in Biglerville, a small community in South Central Pennsylvania. We are processors of fruit products, primarily apples, although we also do tart cherries and tomato juice and make a variety of fruit piefills. We have two plants in Pennsylvania and one in the eastern panhandle of West Virginia.

Musselmans owns approximately 4,000 acres of fruit production land, most of which is in Pennsylvania, but we also have a small amount of orchard land in West Virginia. About 25% of our production needs are supplied by our farm operations, the remainder is purchased from growers. For this operation, we have a Field Department charged with the responsibility for the procurement of our raw materials. Our fieldmen's total responsibility is good grower relations, leading, of course, to the purchase of fruit. Our buyers spend most of their time in the field, visiting growers and answering questions regarding our crop requirements and, of course, price. They help with crop estimates and, seek out answers to technical questions or labor problems from experts in these respective fields. Because I felt it is necessary that you gentlemen understand our company, our products and our agricultural activities, I have submitted this as an introduction to my testimony.

Agricultural Bargaining Legislation, such as HR3535, in my estimation should not be passed. It is Musselman's belief that producers of commodities are entitled to a fair price for their production, investment and risk. We are, after all, producers, as well as processors. However, we are opposed to the concept of agricultural bargaining as a means to achieve this.

The price of farm commodities is primarily based upon the economic principle of supply and demand. That farm commodity which we, at Musselman's, are most familar with is, of course, apples. The price of apples, at least in the eastern part of the country, is determined by the amount of apples and the demand for them by the various processors. In a year when there is a heavy crop throughout the Carolinas, the Virginias, Pennsylvania, New York and Michigan the price will be lower than in a year when there is a lighter crop. Competition in the market place tends to drive the price up when processors are competing with each other for a lesser amount of apples. However, if, in the event, a processor enters the market early with an unrealistically low price, when the market adjusts, the price will be adjusted through retroactive payments. Hypothetically, if a large grower in North Carolina is attempting to sell his crop for the year now rather than to wait until the market opens, he would contact several processors, dickering with each one over price until he finds one who agrees to pay what he considers to be an acceptable price. Assuming a processor in Pennsylvania agrees to pay $5.50 per c.w.t. they would begin receiving shipments of North Carolina apples earlier in the season then they would locally grown fruit. Because of this transaction, $5.50 per c.w.t. would become the opening price of apples in the eastern market. However, if $5.50 per c.w.t. is an unrealistic price because of other factors, this price will change until a final price is reached. Historically, when the price increases in our area, we make retroactive payments to our growers. Thus the price of apples is flexible, according to flucuations within the market.

One of the best examples of how the principle of supply and demand affects the price of a commodity is shown in the following illustration which happened during the past year. During the 1978 apple season, the established price for juice apples was $4.00 per c.w.t. Apples designated as juice apples usually grade out smaller and according to U.S.D.A. standards, as determined by a Federal State Inspector, are not acceptable for our major products which are sliced apples and apple sauce. Juice apples are generally used to make apple juice, vinegar and apple butter. In late 1978 and early 1979, consumers began to buy apple juice at a phenomenal rate and demand outstripped supplies coming from the processors warehouses. Prices for juice apples rose dramatically until by mid-March, apples that were selling for $4.00 per c.w.t. in October and November were now being sold for $9.00 per c.w.t. Demand was high, supply was low and the price went up without any external help. This was accomplished by growers who had their own cold storage facilities and who bargained for the price individually, thus, showing how growers who plan ahead, invest in storage facilities and have a negotiating position can have a greater voice in determining the final price of his commodity.

Certainly, we can appreciate the concerns of producers when prices are low because of an oversupply of a commodity and over which there is no individual control. Indeed, we have found ourselves in such a position many times. Under such circumstances, the idea of a higher price obtained through bargaining has much appeal. But, in the final analysis, while the object of bargaining is to gain a higher price this does not necessarily insure continuously higher income. Higher prices to a producer will drive up the cost of the finished product at the supermarket. If this cost becomes too high, Mrs. Consumer may substitute another product less costly. If the processor is not able to sell his product, he will slow down production on that item, and will not be buying the higher priced commodity at the farm. This defeats the entire process of bargaining. Let us consider, again, an example from 1978. In Michigan last year, we purchased and processed blueberries. We paid the association price of .75¢ per lb. for our raw material. Because of this high initial cost, the price of the finished product was high, this in itself a contributing factor to the high rate of inflation which we now are experiencing. With a higher price at the retail level, the product did not sell well. This caused, what is known in our industry, as a carryover, in this case, a rather large carry over. As a result of this, we will process much fewer blueberries this year in order to keep inventories down. Everybody associated with this product is affected by 1978's high initial cost of blueberries.

The language of HR3535 provides for the creation of a massive new bureaucracy. It also provides for new rules and regulations to be promulgated. This appears to be a direct contradiction to the general direction of government that the present administration has said we would have. We are constantly hearing about de-regulating industries, and less government. All HR3535 can do is give us more of each.

It is our belief that farming is a business, and that survival in business depends upon efficiency. Compulsory agricultural bargaining will help the inefficient farmer by automatically providing a market for his commodities irregardless of how poorly he planned his operation. Agricultural bargaining, in a case such as this, is simply a form of subsidizing the inefficient farmer.

At the present time, there are thousands of grower co-ops throughout the United States. Co-ops, by their very nature of being grower owned, are in a better position to set and establish prices. Once the price is established, in a market, anyone wanting to buy the commodity, must pay the established price. Since co-ops are grower owned and since they set price, it would appear that these growers are satisfied with the price.

While it may be true that food processors and growers have not always agreed on prices of commodities, these two major segments of the agribusiness industry have had a close working relationship over the years that you should be aware of. Food processors have shared expertise in many areas with growers; cultural practices, changes in pesticide rules and regulations, updates on the complicated migrant labor problems, variety developments and mechanical harvesting techniques.

In conclusion, I would like to stress that, in the apple industry, producers and processors have successfully grown and processed many crops of apples, and that, over the years, growers generally have prospered.

Thank you.

(The prepared statement of Gary T. Kaisely, counsel, Musselman Fruit Products, follows:)

H.R. 3535

National Agricultural Bargaining Act

Testimony Before The House Subcommittee On Domestic Marketing, Consumer Relations, and Nutrition

Written Testimony By Gary T. Enisely, Esquire, Counsel, Musselman Fruit Products, PET INCORPORATED, Biglerville, Pennsylvania

On its face H.R.3535 proposes to "assure fair practices in agricultural bargaining". However, in reality this Bill will eliminate the law of supply and demand in agribusiness, artificaly raise the food prices, cause vigorous consumer resistance and possibly change buying habits, all for the sake of protecting the right of every farmer to operate his business without accountability as to efficiency, production, business judgment, management of capital, and experience.

H.R.3535 is extremely inflationary at a time when our nation's economy is suffering from an impending recession compounded with runaway inflation. In addition the Bill is violative of present anti-trust legislation in allowing government legitimized price fixing between farmer and processor at the consumer's expense.

The principal advocates of the legislation provide a formidable lobbying force in Congress. However, it is imperative that the rank and file of the American Agricultural Community be educated and informed of the dire consequences facing them economically if such legislation is passed. In effect, the farmer will be giving up his freedom to bargain and to choose his respective customer for an overly cumbersome and expensive governmental bureaucracy which will further intervene in his decision making process and living.

H.R.3535 is superfluous and unnecessary in view of existing federal legislation such as the Capper Volstead Act and the Agricultural Fair Practices Act of 1967 which give every farmer in this country the right to form associations and cooperatives for bargaining power. Therefore, if the farmers desire to collectively form to bargain with processors, they have the right today. There is no need for further legislation or attention by Congress.

As to our company's concern with the inflationary nature of this Bill, I raise the following points. First, this Bill will subsidize the inefficient farmer and the substandard product by requiring every handler to offer to the accredited association of producers the same prices and terms as offered to any other independent producer, not taking into account differences in quality and methods of farm management. In effect the accredited association will protect and subsidize those farmers which are marginal individually. Second, compulsory collective bargaining will in effect establish minimum prices for individual commodities regardless of the law of supply and demand. Third, three new bureaucracies will be created: USDA, the Association Professionals and the additional Handler staff. The cost alone of fueling and maintaining these bureaucracies will more than counteract any productive aspects of this legislation. In effect the only group to gain by such extensive bureaucracy will be the lifetime bureaucrats rather than the farmers, handlers and consumers.

In reality the intent of H.R.3535 is to legitimize the fixing of the price of every agricultural commodity sold in this country. There is no parallel or analogy to be made in any other sector of our economy as the federal government by all three branches has in the past and continues in the present through anti-trust legislation to insure a market place free from anti-competitive forces. Why should the production distribution of food products be any different?

We at Musselman's have literally decades of experience in producing and processing quality fruit and vegetable products. We, as much as anyone else, realize the need for healthy and successful farmers for if the farmer is not successful neither will we be. Tax reform, land use planning and protection of prime agricultural lands, aid in expanding world markets, educating the consumers as to the realities of costs and risks involved in producing food should be examined and promoted by Congress rather than unnecessary and counterproductive legislation as before this Committee today.

Thank you very much.

Mr. PANETTA. Thank you very much. We appreciate your testimony.

I regret very much the time factor, but we will have to close now. There will be additional testimony from a number of processors and others who take your position. We will again be having hearings tomorrow at 9:30.

I appreciate the testimony of all who have testified.

Thank you very much.

The subcommittee stands in recess at this point.

[Whereupon, at 12:35 p.m., the subcommittee recessed.]

[The following additional information was submitted:]

National Council of Farmer Cooperatives
1800 MASSACHUSETTS AVENUE, N.W. • WASHINGTON, D.C. 20036 • TELEPHONE (202) 659 1525

Office of the President
KENNETH D. NADEN

July 11, 1979

Honorable Margaret M. Heckler
U. S. House of Representatives
2312 Rayburn House Office Building
Washington, D.C. 20515

Dear Mrs. Heckler:

During the hearing yesterday on H.R. 3535, the National Agricultural Bargaining Act of 1979, you asked a most pertinent question: "Can this bill be considered an anti-consumer bill?"

In my opinion, you received an inadequate answer. I am taking this opportunity to give you the opinion of the representatives of the four national farm organizations who testified as lead-off witnesses, when you unfortunately were not able to be present.

This bill is definitely a pro-consumer bill. The basic reasons are twofold: (1) it will have a stabilizing influence on some of the erratic ups-and-downs of market prices which adversely affect farmers and consumers, and (2) it will give farmers an additional sense of security to encourage them to make the investments and assume the risks necessary for full farm output which consumers and the nation need. And it should not be forgotten that more price stabilization is an important benefit to handlers as well.

The fundamental truth that is dominant here is that food security for consumers depends upon farmer security. No part of the American economic system benefits consumers more than the full output of our highly efficient family farm food production system. It has always been encouraged as a matter of national policy. No other industry in the economy commits itself to full, unrestricted output regardless of the price consequences. No other corporate or public utility system of agricultural production would have the same full output incentives and be likely to produce food as efficiently as our present system.

It is for these reasons that I can assure you that H.R. 3585 is a pro-consumer bill.

By encouraging this family farm food production system, the bill helps assure consumers of economical and reliable food supplies. Its pro-farmer features will help keep our farmers in business and assure them of a stronger

"AMERICA'S FARMER OWNED BUSINESSES"

role in fair and equitable participation in the American economic system. It is discouraging to be a small operator trying to sell to corporate giants. Therefore, a major benefit of this bill will be to give farmers a greater sense of security, an uplift in morale, and the better opportunity for economic survival on a more equitable basis.

The summary, then, is that this bill should be enacted by the Congress because it offers far more benefits to farmers, consumers and handlers than any concerns it causes for handlers by reducing their position of dominance in dealing with individual farmers. It will have minor impact on prices of raw products or on food processing and marketing operations, but it can have major benefits to farmers and thereby assure the maintenance of the full output which our family farm system is capable of producing and which our nation urgently requires.

Sincerely yours,

Kenneth D. Naden

Kenneth D. Naden

KDN:fb
cc: Members, Domestic Marketing Subcommittee,
House Agriculture Committee

Honorable Margaret M. Heckler
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National Council of Farmer Cooperatives

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AGRICULTURAL BARGAINING ACT

WEDNESDAY, JULY 11, 1979

House of Representatives,
Subcommittee on Domestic Marketing,
Consumer Relations, and Nutrition
of the Committee on Agriculture,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 1302, Longworth House Office Building, Hon. Leon E. Panetta (acting chairman of the subcommittee) presiding.

Present: Representatives Grassley and Findley.

Staff present: Peggy Pecore, clerk; Joseph R. Crapa, Glenda Knight, Gerald Jorgensen, Linda Miller, Frank Winston, and Bernard Brenner.

Mr. Panetta. The Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition is now in order for purposes of a public hearing on H.R. 3535, the Agricultural Bargaining Act.

I would like to welcome those witnesses who have come to testify on this legislation. Today, we have a large number of witnesses, and for those reasons the Chair will impose a 10-minute limitation with regard to witnesses and would urge those who are going to testify, if possible, to try to summarize their comments as much as possible so we can allow room for all of the witnesses today. The House is going into session at 10 o'clock, and the full Agriculture Committee is meeting at 10:30, so it is a busy day throughout the Hill. In addition, members in terms of their questions will be limited to 5 minutes in order to again give everyone equal access to questions and an opportunity to address the issues that are here.

The first witness this morning is Mr. Bob Arndt, of Echo, Minn., the president of the Minnesota National Farmers Organization. Mr. Arndt, on behalf of the subcommittee, we would like to welcome you here. Thank you for taking the time to come here and you may proceed.

STATEMENT OF ROBERT ARNDT, STATE PRESIDENT, NATIONAL FARMERS ORGANIZATION, ECHO, MINN.

Mr. Arndt. Thank you, Mr. Chairman. I have a short statement, and I would like to read it, if it would be all right with you.

My name is Bob Arndt. I am president of the Minnesota National Farmers Organization. I farm near Echo, Minn., and work 600 acres of row crops.

As a producer of food and fiber, I recognize the need for nationwide collective bargaining for farmers and ranchers. I have been a long-time member of the nationwide collective bargaining organization that has proven effective in negotiating contracts with major buyers of my product and the product of my neighbor members.

My experience in the field of bargaining with buyers of farm production has clearly indicated to me that bargaining in good faith can only come about when enough farmers block enough volume of like kind of production together in a large enough area and move that large block of supply in a direction so that the buyers who need part of that block will sit down with the producers and in good earnest faith, discuss how they can get part of that block of supply and what marketing terms and prices we as producers need to have. This is what is taking place every day, nationwide, between NFO members and the buyers and processors of farm production. It is already happening.

The Capper-Volstead Act of 1922, legislated by Congress, is a beautiful document. It has given the American family farmer the right to act together nationwide, to block his production for bargaining and enter into contracts with processors and buyers for fair and equitable prices. No producers are exempt. It is available to all farmers and ranchers, and it already is working, and it is effective.

Major processors and smaller buyers are presently bargaining in good faith for grain, meat, milk, sunflowers, and other commodities. They are entering into contracts with producers. This has taken place because of free enterprise initiatives by producers using the legislation already provided.

Collective bargaining is a two-way street. The producers who have something to sell must be in a position to satisfy the needs of the processor whom they wish to bargain with, and when that position is accomplished, the buyers will sit down and negotiate with that farm bargaining group. Legislation at that point, to make it mandatory that the processors bargain in good faith, is not needed.

On the other hand, if processors were forced, through legislation, to sit down and bargain in good faith, but could not be guaranteed their needs, the bargaining would be meaningless and lead many producers to believe that real bargaining was taking place and cause them to fail to take the steps necessary to make collective bargaining work.

H.R. 3535 is of no value, except to attempt through more government, to do what is already being done by farmers' own initiative in the free enterprise system. The members of the NFO do not want more legislation in the field of bargaining. It can only interfere with the bargaining success they have already achieved for themselves, and all farmers for that matter, through their own initiative in the free enterprise system.

NFO members in Minnesota will not tolerate government action to interfere with successful citizen action, in this case, nationwide collective bargaining through the NFO and other bargaining groups with like experience and expertise.

We cannot legislate commitment by producers, and we cannot legislate good faith bargaining by processors. These are two ingredients that must come about with experience, a need, and the feeling between those who are directly involved.

In the hearing yesterday, Mrs. Heckler inquired about the potential cost of this legislation to the consumers of our food producers.

As a farm operator and officer of our organization, I cannot give you an accurate answer in dollars and cents. But from my experience I can give you this warning.

If this bill becomes law, I would expect that an untold number of politically ambitious individuals would undertake to organize little bargaining groups throughout the farm counties of the Middle West. If all these groups were approved as accredited bargaining agents, you might first expect that this would encourage competition and be a healthy thing in the industry.

From our experience, I think it would mean more division among farmers, unstable supply for processors, court cases, and an endless series of arguments for the bureaucrats in the Department of Agriculture, and accountants and the time involved.

If the producers have to pay those bills, this means that eventually they will have to have more money for their products, and after the products move through the food chain, everyone else will add their cost on a percentage basis.

In closing, let me say that this attempt to legislate bargaining for farmers has the potential to create another bureaucracy, and it cannot possibly improve on the present authority for nationwide collective bargaining. Let us realize that H.R. 3535 may give farmers and ranchers false hope. It may cause many never to get into a meaningful bargaining position because they will have the impression the Government is doing it for them.

Under "Bargaining in Good Faith," line 25, it provides that either party need not agree to a proposal or make a concession. Of what value is that? Free enterprise bargaining as we have developed it, has had positive results and has had meaningful value to both parties. It seems to me that this legislation provides two things. Where bargaining is actually taking place in good faith by the free enterprise system, it allows for the Secretary of Agriculture or anyone to interfere and throw a monkey wrench and harass sound bargaining efforts. On the other hand, it provides where the processor sits down with people who want to bargain, no meaningful results or concessions will take place.

On behalf of the members of the Minnesota National Farmers Organization, I thank you for this time to testify against H.R. 3535, a piece of unneeded and unwanted legislation by our producers of food and fiber.

Mr. **Panetta**. Thank you, Mr. Arndt.

Let me ask you, I take it that you are obviously in favor of free enterprise bargaining in the agriculture area. Is that correct?

Mr. **Arndt**. That is correct.

Mr. **Panetta**. In your statement, you mention that if this bill is passed, there would be a number of individuals who would organize bargaining groups throughout the farm counties, and they would be accredited as bargaining agents, and that at first this would encourage competition and be a healthy thing in the industry. Isn't that what the free enterprise system is about?

Mr. **Arndt**. That is correct.

Mr. **Panetta**. What is wrong with that?

Mr. **Arndt**. Nothing. The problem is that you create these groups, and if these groups are created, I can see from the experience we have had that collective bargaining could be used as a political football, for one thing, pitting one group of farmers against another group of producers in the country and not building enough supply among any one bargaining group to attract the attention of a nationwide buyer of commodities to fulfill the needs, and fragmenting the collective bargaining structure or fragmenting agriculture at this time is something we don't need. We need more working together of farmers, and I can see where this can fragment into small groups of bargaining, one group jealous of the other group trying to gain favor of the buyers, and this bill would get buyers sitting down and discussing and negotiating with the small groups and nothing really taking place.

It says no concessions need to be made, and we could go for years and never nail down good sound bargaining, or sound contracts, through bargaining with the industry.

Mr. **Panetta**. The approach of your organization is, in effect, to block down areas of commodity supply, an entire area, isn't that correct, and then bargain on that basis?

Mr. **Arndt**. You see, the industry needs to be supplied with our commodity as producers and to sit down and negotiate a contract with a major buyer, a nationwide buyer. He needs to have a certain amount of supply to meet his commitments. He is interested in a contracted supply for himself. We have to have enough production in a bargaining group to fulfill his needs because otherwise he is not interested in signing a contract with us. I wouldn't be, and I don't think anybody else would be, either. This is the reason we need to bring together enough supplies so that we can fulfill the needs of a buyer once a contractor's marketing terms are signed. This is what our intentions are.

Mr. **Panetta**. Couldn't it be argued if you block out a whole area of commodities in dealing with processors that is less competitive than having a number of groups dealing with the processor?

Mr. **Arndt**. The competition as far as what farmers need is cost of production plus a reasonable profit. I don't think anybody can argue that. To get the processing industry and the buying industry to meet those terms, it takes a large amount of supply and to sit down and negotiate a contract with a large industry, that amount of supply must be offered to him. Under the provisions of the Capper-Volstead Act, the farmers cannot ask and receive more than what a fair price is that will cover the cost of production plus a reasonable profit because at that point the Secretary of Agriculture can step in and say, wait a minute, you are charging too much and call us in.

Under H.R. 3535 the same thing can happen, but it can happen for anything that somebody thinks the collective bargaining group is doing wrong and keep collective bargaining in a turmoil, as I read it.

Mr. **Panetta**. Do you feel that if farmers get together in a co-op to bargain, and they may not be part of your organization, they may form their own organization? Don't you think they are entitled to fair bargaining as well?

Mr. **Arndt**. Absolutely. If they have the expertise and know-how to bargain collectively and will do it on their own initiative, they have the right, and I agree they have the right.

Mr. Panetta. The testimony that has been presented here yesterday in part indicates there are processors that, in fact, don't recognize these groups for bargaining purposes. Is it your contention, then, in those instances that is just the way the system goes, and that if they were smart, they would block out their commodities like you are and operate on that kind of leverage as opposed to any law that requires fair bargaining?

Mr. Arndt. Let me say in the beginning with our organization the processing industry did not recognize our group as a source of supply. It took organization, it took a lot of experience until the time when we were able to get enough production together to fulfill their needs, and at that point they sat down and bargained, and we have been negotiating and bargaining ever since in good faith.

This is what it takes for any bargaining group, whether agriculture or what part of the economy it is; you have to have enough strength with any bargaining group so that those you are dealing with can be satisfied with their needs. Bargaining is a two-way street, not just farmers getting better prices; it is the processors who need to have their supply under the same contract.

Mr. Panetta. Well, I want to thank you for taking the time to come here and testify. We appreciate having your testimony as part of the record on this issue. Thank you.

The next witness is Mr. Richard Steffen, of Dunkerton, Iowa, president of the Iowa National Farmers Organization.

STATEMENT OF JOSEPH R. STEFFEN, IOWA STATE PRESIDENT, NATIONAL FARMERS ORGANIZATION, DUNKERTON, IOWA

Mr. Steffen. Mr. Chairman, I thank you very much for inviting me to be here and participate with your subcommittee this morning. My name is Richard Steffen.

First of all, I have a brief statement, and it won't take over 10 minutes, and, with your permission, I will read the complete statement.

Mr. Panetta. You may proceed.

Mr. Steffen. I am a farmer in Black Hawk County, Iowa. In my own farming operation I have a dairy, produce grains, feeder cattle and hogs, much the same as the vast majority of Iowa farmers. I use the bargaining program of the National Farmers Organization for the commodities that I produce. It is working today. We do not need Government supervision. I oppose bargaining bill H.R. 3535 for what are in my opinion rather fundamental reasons.

When representatives of the National Farmers Organization appeared before your subcommittee yesterday, Mr. Panetta specifically asked why we don't want the bill or, paraphrased, why it would not aid in bargaining. Please let me try to answer these questions directly.

Section 5 of the bill, on page 7, it is provided that any handler purchasing a product from producers under terms more favorable than those offered to the members of an accredited association shall be legally required to pay the same price, offer the same terms, and so forth. What that section means to me as State president of our organization is this. We have spent a great deal of money and time developing our bargaining contracts. Suppose we have the contract to furnish all of the hogs that a packer may need at a particular location. Suppose he is paying a premium over the going market because we are willing to control weights and quality and guarantee him the number of hogs he needs each day.

If this bill becomes law, any little dissident group of hog producers who could successfully obtain an "accredited" status with the Department of Agriculture, could demand the same terms from that packer for additional hogs that he does not need.

That packinghouse manager would have only one option. If pressed by the accredited group, under the regulations of the Department and going to the courts, he would force the packer to cancel our contract because he can only use so many hogs in each day's operation.

The same thing would apply for one of the milk cooperatives or for one of our local milk delivery programs if several groups undertook to force upon a city dairy or a cheesemaker, more product than he can really use. This provision would threaten and interfere with bargaining programs that are now in operation, both in the NFO and with some other organizations.

The other specific provision that is highly objectionable to me as a farmer is in section 10 on page 14 of the bill. After authorizing almost unlimited authority for any little group or individual to file charges and insist that a Secretary of Agriculture conduct investigations, hearings and other interference with the business activities of ours or any other organization, the drafters of this legislation provide further that the Secretary of Agriculture may institute any inquiry and interference in our business on his own motion.

The second sentence, "The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion, as though a charge had been filed with him, including the power to make and enforce any order," grants to a political officer of the Government the authority to harass any organization or group of citizens who were undertaking to form an organization, in a manner that is almost unbelievable.

I am a farmer. You are politicians. Certainly you must understand that any Secretary of Agriculture who was inclined to use this authority as a political weapon, could bestow undeserved advantages on his friends and hamper the bargaining efforts of those groups who did not serve him in a political fashion.

I do not wish to get into an argument about the details of this legislation because I am opposed to the whole bill. I want it clearly understood on the record, however, that our farm people in Iowa will not accept this kind of interference in our business.

Bargaining or bargaining power is not something that can be given to anyone or any group by our Government. It has never been done, at least to my knowledge. It has to be earned by honest negotiation. This may be accomplished under the Capper-Volstead Act.

Bargaining requires the producers' constant discipline and determination or they will never accomplish it. What I am saying is that present provisions in law are now and have been adequate for a long time.

Farmers in the past have been resourceful people. Those who came with the Pilgrims to this new country first settled in the East. Later, they broke the prairie and fought the cattle rustlers. I am sure today's farmers can and will establish the kind of bargaining they need without the Congress wasting their time writing new laws and building up new bureaucracies.

Mr. Chairman, that completes my statement.

Mr. **Panetta**. Thank you for your testimony, Mr. Steffen. Let me ask you a couple of questions.

You indicate that one of your concerns is that in establishing a contract that any dissident group that is given accredited status could demand the same terms from the packer. Can't that happen today? You don't need a dissident group.

Mr. **Steffen**. As I understand that, Mr. Chairman, that could happen today if another group were organized under the Capper-Volstead Act, such as we are. What I am concerned about mainly on this, if any other group of farmers want to meet those conditions, the same as we in the National Farmers Organization have met, fine, we will compete with that, but let's keep the Government out of it.

Mr. **Panetta**. Let me reverse the situation. Let's assume another bargaining association, not the NFO, is dealing with the processor and that that processor won't recognize the NFO to bargain or sit down with or in any way negotiate with them, which is something they can do now. Do you think that is fair?

Mr. **Steffen**. Mr. Chairman, that has not been a real problem, or presently it is not a real problem as far as the NFO is concerned. We have no problem getting the processors to sit down and negotiate with us, so, that part, we have passed that stage. And with the NFO we have no problem with negotiating with processors.

Mr. **Panetta**. I guess what I am saying, though, is obviously there are situations where processors have refused to bargain with certain cooperatives. If the NFO were put in that position, wouldn't you want to have the ability to at least sit down at the table and negotiate terms with the processor?

Mr. **Steffen**. As I said, Mr. Chairman, that has not been a problem; there is not a problem with us now, and I am not sure that the Government interference in that, as I said in my testimony—you have to have for successful bargaining the discipline and the determination of your own members to be successful in it. You are bringing a third party into the thing that I feel is totally costly and unnecessary.

Mr. **Panetta**. I don't disagree with you that any group that does bargain has to obviously have discipline among their own members; they have to organize, and they have to be able to present the goods, there is no question about that.

I guess the question is getting people like that to the bargaining table, at least to the point of negotiations; whether or not the processor has to accept those terms, that is pretty much left up to the parties. The real issue is getting through the door, and it seems to me at that point at least once they are through the door, you have as much right to compete with those other groups as anybody else, but it is getting through the door that is the key to why this legislation was even developed.

Mr. **Steffen**. Certainly getting through the door is the thing that you have to have, and, again, Mr. President, I don't know any better how to answer you than as what I basically said before. You get hold of enough of the production that the processing industry cannot get by without, where else are they going to go; they are going to come to you, and that is what we in the National Farmers Organization have done and have got.

On that basis, since we have that, we don't feel that a third party or the Government being involved in that will be of any help or any aid to farm bargaining. It would be a costly hindrance and a decisive thing among the farmers.

Mr. **Panetta**. Your basic approach with the NFO is if you block out enough of that commodity in an area and have total control of that commodity, therefore, the processor absolutely has no other alternatives but to sit down and deal with you, is that it?

Mr. **Steffen**. That is right, sir.

Mr. **Panetta**. I guess the problem is that it has been very difficult to block out those commodities, because there are groups and there always will be groups that will never want to do that. Isn't that a fact right now?

Mr. **Steffen**. I assume some people perhaps are having problems on that. That is why they are talking about this sort of thing, but, as I said, today we have processors coming to us, and that is not our problem. If that is the processor problems, if it is the other party that wishes to negotiate with someone, that is their problem, and, as I said, we have no qualms about any other organization wanting to establish an organization like ours without the aid of Government as far as competing with them.

Mr. **Panetta**. If this legislation were adopted, would you recommend that the NFO seek accreditation under the Secretary's provisions here?

Mr. **Steffen**. I would assume from what I understand, we would have to, sir.

Mr. **Panetta**. You wouldn't have to. You just wouldn't have the protection of the Department of Agriculture, but you can go ahead and do what you want to do; it is a voluntary program.

Mr. **Steffen**. I would assume, then, we would have to weigh whether we have enough production. If we have enough production, he would go to the processor and deal with him on that basis.

Mr. **Panetta**. Thank you very much for coming and testifying. I appreciate your coming that distance and presenting your views to the subcommittee.

Mr. **Steffen**. Thank you, Mr. Chairman.

Mr. **Panetta**. The next witness is Mr. Fritz Friday, chairman of the board of the National Food Processors Association.

Mr. Friday, welcome to the subcommittee. We appreciate your taking the time to testify. This is obviously key legislation that certainly would impact on your industry, and we appreciate your coming before the subcommittee.

STATEMENT OF FRITZ C. FRIDAY, PRESIDENT, FRIDAY CANNING CORP., NEW RICHMOND, WIS., CHAIRMAN, NATIONAL FOOD PROCESSORS ASSOCIATION, ACCOMPANIED BY ED DUNKELBERGER, ASSOCIATION COUNSEL

Mr. FRIDAY. Thank you, Mr. Chairman. My name is Fritz Friday. I am president of the Friday Canning Corp., a medium-sized canning company in New Richmond, Wis., and also chairman of the National Food Processors Association. I am testifying today on behalf of the association and its more than 550 food-processing companies that produce more than 90 percent of the canned food in the United States. With me is Mr. Ed Dunkelberger, who, as counsel for the association, is very familiar with this legislation. We very much appreciate the opportunity to testify today on H.R. 3535, the National Agricultural Bargaining Act of 1979.

I have submitted a written statement which I will highlight. I request that my written statement be included in the hearing record.

Mr. PANETTA. Without objection.

[The statement appears on p. 121.]

Mr. FRIDAY. The National Food Processors Association is categorically opposed to H.R. 3535. This opposition stems from our longstanding belief in, and reliance upon, the workings of a free market to serve both the interests of farmers and purchasers of agricultural commodities. In opposing this bill, we must make it clear that we do not oppose voluntary collective action by farmers. NFPA supported passage of the Agricultural Fair Practices Act of 1967. That law confirms the right of farmers to join or not to join bargaining associations and to be free from discrimination, coercion, or intimidation on the part of processors, or association organizers, in the farmers' exercise of that right. Our support for this is not hollow. A number of bargaining associations throughout the country are active in the sale of various canning crops, and canners do bargain with them.

We feel strongly that when producers feel it is in their interest to market through a bargaining association, they will do so. Producers who determine it commercially desirable to negotiate with and to purchase through an association now have the right to do so. This right is freely exercised under current law.

The enactment of H.R. 3535 would set aside long established principles of antitrust and free enterprise. We remind the members of this subcommittee that in previous Congresses both the Federal Trade Commission and the Antitrust Division of the Department of Justice repeatedly emphasized the anticompetitive nature of compulsory bargaining and the violence such legislation would do to basic principles of antitrust.

Further, this legislation would almost certainly result in substantial dislocations among growers and growing areas, between competing and interchangeable agricultural commodities, and in international trade.

It is astonishing that this bill is being considered at a time when the Nation is already caught in an inflationary spiral, and when Congress and the President are engaged in serious efforts to eliminate Government intervention in the marketplace. Enactment of this bill would go against the long overdue momentum in Congress and the executive branch to eliminate unnecessary regulation and restore competition to the marketplace and thereby deny consumers the ultimate benefit of competitive prices.

No amount of talk about stabilizing prices can disguise the fact that the intent of this bill is to raise prices. If the bill were enacted, and if it achieved its goal, the result would be higher food prices for consumers.

The bureaucracy required to administer this law would add substantially to the cost of Government and thus fuel inflation. In addition, the system embodied in this bill could force many processors out of business, and those that survive would be faced with additional administrative costs.

Under the bill, failure of a processor to accept the price demands of an association will either put him out of business, subject him to charges of unfair practice in a protracted and costly enforcement proceeding, or force him to compulsory arbitration with a group certified by the Secretary of Agriculture.

The economic threat of this legislation to food processors is very real. Our association represents the broad spectrum of food canning companies from the very large to the very small. Our small- and medium-sized members are particularly hard hit by any additional Government regulation. They would also be damaged by the market disruptions that this legislation would cause. Contrary to the monolithic image of industry that many seem to have, there are many small companies in the food-processing industry whose existence adds vitality and competition.

Our industry provides consumers a wide variety of products at reasonable prices that are competitively determined. It would be a misdirected exercise of the Government's power if it were to pile additional regulatory and economic burdens on the food-processing industry, particularly the smaller processors, in the name of what is euphemistically called "stabilizing" prices.

Prices for canning fruits and vegetables are not in need of so-called stabilization. In my State of Wisconsin, for example, I can assure you that farmers have a wide range of choices available to them. They will decide to grow vegetables for canning only if they are satisfied that the preseason contract prices available to them are satisfactory.

The system is working, and it is effective. We therefore urge in the strongest possible terms that this subcommittee reject this unprecedented, extremely burdensome scheme for Federal control of agricultural bargaining.

Mr. Chairman, Mr. Dunkelberger has additional comments for the record.

STATEMENT OF ED DUNKELBERGER

Mr. **Dunkelberger**. One point wholly aside from the compulsory bargaining aspects of the bill is the fact that the Department of Agriculture will be designating which handlers will deal with which growers and which growers associations. The checkoff is another aspect of the bill that hasn't received much attention, as far as we know. The unfair practice provisions of section 4 cite a series of prohibitions against handler activity in section 4(a) and in section 4(b), a few prohibitions against bargaining association activity. These would take the place of section 4 of the Agriculture Fair Practices Act of 1967, which was enacted as a compromise measure acceptable both to the farm organizations supporting the legislation and the processors.

In the existing law that now applies, handlers, which include bargaining associations, are prohibited from coercing a producer in the exercise of his right to join a bargaining association or not to join a bargaining association. Farmers cannot be coerced not to join, nor can they be coerced to join an association by anyone.

In addition, the discrimination provisions and the intimidation provisions equally apply across the board both to processors and to associations. This was very deliberate in the 1967 law. It was to make sure that it was a two-way street, that farmers would be protected in their independence to join or not to join.

The 1967 law provides that the definition of handlers includes those who contract on behalf of producers. The interesting thing about H.R. 3535 is that it would eliminate this two-way street of existing law. Oddly enough, it would not only give association organizers great power, it would repeal those provisions of existing law which prohibit organizers of bargaining associations to coerce farmers to join. We have no idea why this provision would be repealed, but it is clear beyond question that the section 4(b) prohibitions are not aimed at protecting farmers from their right not to join. They are aimed at protecting associations in interassociation battles, or association organizers.

We think this is important to point out when proponents of this legislation are testifying and talking about abuses in the marketplace. When asked yesterday whether they would change the prohibitions, they came up with nothing specific, but they did not point out that the provisions of law that now prohibit the associations from coercing farmers would be repealed by H.R. 3535.

Thank you.

Mr. **Panetta**. Could I ask what specific provisions are you pointing to where you feel that an association could coerce? Are you saying that, in effect, this legislation would allow associations to coerce membership into the association?

Mr. **Dunkelberger**. It would not prohibit it. The Agriculture Fair Practices Act of 1967, which is the existing law, in section 3 defines "handlers" to include an association, and in section 4 makes it unlawful for a handler to coerce a grower to join. That is clear in existing law. There can be no question, and the legislative history reflects that. That prohibition would be repealed by H.R. 3535.

If you look at section 4(b), on pages 5 and 6, those are the only prohibitions that read against an association. What is prohibited there is to refuse to bargain in good faith or to coerce or intimidate a handler to breach or cancel a contract. An association can't circulate false reports about another association or a handler, or an association cannot coerce or intimidate producers to breach a membership agreement with an association. In other words, those protections read on protecting associations from each other. Apparently they contemplate that association managers might try to steal each other's members by coercion, and they prohibit that. But they don't prohibit the coercion of the producer to join an association in the first instance. That prohibition is now contained in existing law. We don't know why that repeal would take place, and we are not maintaining such coercion does exist.

Mr. PANETTA. What you are saying is with regard to the associations that you feel that the associations, themselves, ought to—if something like this is going to take place, they, too, should be protected or members should be protected from the coercion of the association as well as from the coercion of the processor?

Mr. DUNKELBERGER. Yes, Mr. Chairman, that is existing law. That was the law that the National Canners Association, now the National Food Processors Association, supported—prohibitions both against processors and associations from coercing farmers.

Mr. PANETTA. I think that is a legitimate criticism.

Let me ask you with regard to the pricing. You indicate at one point that the purpose of the bill is directed at increasing prices for agricultural commodities, and I guess my question would be, why is this bill going to result in higher prices any more than the present collective bargaining process that you now engage in?

Mr. FRIDAY. Mr. Chairman, we are organized now under a voluntary program, and if the producers, as pointed out, have sufficient production under their control to bargain, we bargain with them. This is true in California and other States. The problem is that you are politicizing the process, and you are not letting economics take over. The political process will require eventually the people in southern Wisconsin to get paid the same as in northern Wisconsin, the same as in Michigan, the same as in New York, for the identical commodity, and the cost of production in those areas is not the same. For sure, they are not going after a lower price. They are going to go after the highest common denominator price. That higher price will get passed on to the consumer; it has to.

Mr. PANETTA. Isn't that the nature of the collective bargaining process?

Mr. FRIDAY. It is the nature of the collective bargaining process to seek the highest denominator, which has nothing to do with the economics of the situation; it is totally political. The cost of producing green beans in northern Wisconsin on dry land is different than the cost of producing green beans in central Wisconsin on irrigated land.

Mr. PANETTA. I don't see anything in this legislation that prevents a processor—once the two sit at the table and negotiate terms, I don't see anything in this legislation that mandates what those terms will be or what the price will be, for that matter. Isn't that a matter that is left to the negotiations that go on between the parties?

Mr. FRIDAY. True, but if you are mandated to bargain with a particular group, and you have effectively then no choice to get your supply anywhere else, the easy answer is just eventually to say fine, we will all get in a cozy room and decide that the price should be such-and-such, and eventually the processor is going to cave in to the politics. After all, he doesn't care in the long run if everybody has to pay the same price; it is really not the processor's basic concern at that point, and if everybody is paying the same price, he will cave in. It becomes what we think is an unhealthy cozy arrangement between the processors and bargaining association. We don't like it and don't think it is good for the consumer or competition. It forces an unfair competitive situation between areas.

Mr. **Dunkelberger**. Remember, Mr. Chairman, good faith bargaining, if it means anything must mean that the parties must intend to reach an agreement. That certainly is what good faith bargaining means in the labor area. It isn't just a door opener. When you sit down, you have to intend to reach agreement with the association that the Secretary of Agriculture has said, "That is whom you have to intend to reach an agreement with." That is the concern. With that power the bargaining association management will know then that the processor is in an extremely weak position to resist any demand because the Department of Agriculture has told them that is whom he has to try to reach agreement with.

In our written testimony we point out on page 10 that in Michigan, where they have such a bargaining law, the Michigan price for apples was pegged as much as 45 percent above the out-of-State competitive prices. That is an example of the kind of thing that bargaining association organizers or managers may well try to insist upon. It didn't work in that instance because there were other sources of apples. The only result was that the Michigan applegrowers were hurt; the market for their product disappeared because the processors said we can't pay that.

If this was passed as national law, and that same 45-percent price were insisted upon, what is the choice of the processor except to accept the higher price, and pay it, and then open themselves up to foreign competition or from other products, and essentially to ruin the apple market, or not to pay it. So you just can't say that free bargaining takes over when the law says you have to try to agree with those guys, and if you don't try to agree with them, you are open to a charge of unfair practice. And the section on compulsory arbitration says that if you can't reach agreement, the Secretary of Agriculture can take over and say this is the price you have to pay.

Mr. **Friday**. Their ability to do this historically is pretty bad. We are not impressed with the ability of the Department of Agriculture to set pricing in any field.

Mr. **Panetta**. In terms of negotiating with employees in your plants, though, you pretty much engage in this kind of bargaining?

Mr. **Friday**. In some we do and in some we don't. But it is a much smaller geographic group; it has much more application, I think, in the labor field than it does in the agriculture production field. After all, these are employees in a given town. The economics of that given employment area are significantly different than they are in the agriculture area where the product is transportable. You can't transport a laborer from New York to Wisconsin, but you can transport green beans from New York to Wisconsin.

Mr. **Panetta**. If there were competing associations within an area, each of which had the right to sit down and bargain with you, wouldn't that from a free enterprise point of view give you more options than the discussion of a single cooperative association?

Mr. **Friday**. Under this bill there would be chaos. Each of these bargaining associations could call foul; bring in the Department of Agriculture; and we would be in hearings. Following the USDA hearings we would be in judicial review forever. We wouldn't get anything solved.

Mr. **Panetta**. I honestly don't know that much about it, but that was the criticism, as I understand it, of the Michigan law, and, in fact, in testimony presented yesterday that has not been the result.

Mr. **Friday**. My understanding, the Michigan bill aside, is that the practical effect of the Michigan bill is that the people who are doing the bargaining are producing 2 or 3 percent of production. The rest of the people don't care, and, as a result, these people who are aggressively interested in the thing have the process so skewed from economic reality as to make it an unworkable situation, and that is the particular thing that happened with apples. Apples are a transportable commodity. If you want to goof up the apple market, you can goof up the U.S. market as well, and we can bring them in from China.

Mr. **Panetta**. My point is to the criticism that once you enact this, it will result in a deluge of unfair practice complaints and what-have-you, and evidently that has not been the experience in Michigan, and I guess what my question is, are you familiar with the situation in Michigan, and do you contradict that particular testimony, because the indication yesterday was that negotiations have, in fact, resulted in some 350-odd agreements, and something like only 10 to 15, in fact, had to go to arbitration.

Mr. **Friday**. I think the problem in Michigan was that you were dealing with rather specific groups. In other words, if you are an apple producer, you are in the apple business, and that is it. Whereas if you are a vegetable canner in Minnesota, or Wisconsin, or New York, you are dealing with green beans, peas, lots of different commodities, and it is the cross-commodity situation we feel would be different here.

Mr. **Dunkelberger**. Certainly in Mr. Friday's case, if the growers in his area don't like the price he is offering for peas or beans per acre, they have many other options to grow on their land.

Mr. **Friday**. They can grow peas for me or my competitor, or more importantly, not at all, and they grow soybeans or sunflowers or field corn, something of that type. There is plenty of competition out there. Our competition effectively for our growers is other grain products. We feel there is a lot of competition out there.

Mr. **Panetta**. Thank you, gentlemen, for your testimony.

I have a vote on the floor, and the subcommittee will be in recess for approximately 10 minutes so I can go over there and vote for the trade agreements.

[Brief recess for Members to vote.]

[The prepared statement of Mr. Friday follows:]

Statement of the
National Food Processors Association on H.R. 3535,
the National Agricultural Bargaining Act of 1979,
before the Domestic Marketing, and Consumer Relations,
and Nutrition Subcommittee
of the House Committee on Agriculture
July 11, 1979

My name is Fritz C. Friday. I am President of the Friday Canning Corporation of New Richmond, Wisconsin, and Chairman of the National Food Processors Association. I am testifying today on behalf of the Association and its more than 500 active members who process more than 90 percent of the national production of canned foods, and a substantial portion of other food products. We very much appreciate the opportunity to testify today in opposition to H.R. 3535, the National Agricultural Bargaining Act of 1979.

At the outset we believe it is important to emphasize that the National Food Processors Association supports the long established right of farmers to join bargaining associations and to bargain collectively for the sale of their agricultural production. We are satisfied that existing law is entirely adequate to protect that right, and we fully agree with those who maintain that that body of law does not need changing -- either to restrict the right of collective action on the part of farmers or to convert the voluntary aspects of agricultural bargaining into an oppressive, compulsory system.

Because of our support for the right of farmers voluntarily to take collective action, NFPA endorsed the enactment of the Agricultural Fair Practices Act as passed by Congress in 1968, confirming the right of farmers to join or not to join bargaining associations and to be free from discrimination, coercion or intimidation on the part of processors or association organizers in the farmers' exercise of that right. We are satisfied that the fede antitrust laws, including the Capper-Volstead Act, and the Agricultural Fair Practices Act, provide assurance to farmers that they are free to make up their own minds as to what they will grow and to whom and how they will sell.

The canning industry's recognition of the right of farmers to join and sell through bargaining associations is not merely a theoretical position. A number of bargaining associations throughout the country are active in the sale of various canning crops. Many companies in the canning industry bargain with these associations for the purchase of some portion of their raw product needs.

An absolutely essential element in this process, however, is that, in the marketplace and under existing law, bargaining for the purchase and sale of canning crops is a voluntary act that takes place in a free market, with no compulsion or legal obligation on the farmer, the processor or the association to deal with any other party. In this way, and in this way only, can the marketplace effectively allocate resources, respond promptly to varying conditions of supply and demand, and assure reasonable prices that reflect consumer demands and the competitive relationships among different production areas and between different commodities.

In our view farmers must remain free to decide what they will raise based on prevailing contract prices and other market conditions and to deal how and where they feel it will be to their best advantag Similarly, processors must retain the businessman's traditional right to purchase supplies on a competitive basis, free from the arbitrary dictates of government-approved and -sanctioned association managers, and free from federally mandated prices and other conditions of sale.

When a bargaining association can convince enough producers that it is in their interest to market through a bargaining association, and when the association can find processors who determine it commercially desirable to negotiate with and to purchase through the association, then and only then can collective bargaining be justified. Absent these voluntary decisions freely made in the marketplace it would be a tragic mistake for government to insist that collective bargaining between designated buyers and sellers must take place.

In short, H.R. 3535 is fatally defective in its concept and intent. We are convinced that no amount of revising or amending can convert this bill into legislation that makes sense economically, politically or legally. For this reason our testimony will focus on certain basic aspects of the legislation rather than on the particular wording of specific sections. We are concerned that undue attention to the detailed provisions of the bill may cause one to overlook the more fundamental objection to this revoluntionary scheme for federal control over a major aspect of the economy.

There can be no mistake that the enactment of this legislation would be a watershed event, without precedent in any body of federal law. Long established principles of antitrust and free enterprise would be set aside in favor of a market system totally controlled by organizers of bargaining associations, backed up by the strong arm of the Secretary of Agriculture wielding comprehensive powers of administration, investigation and enforcement. When previous Congresses considered similar legislation, both the Federal Trade Commission and the Antitrust Division of the Department of Justice repeatedly emphasized the anticompetitive nature of compulsory bargaining and the violence such legislation would do to basic principles of antitrust.

But even if one is unpersuaded by such concepts as free enterprise, competition and antitrust, there remains the unavoidable economic fact that the conversion from voluntary, competitive bargaining to compulsory bargaining between federally designated buyers and sellers would almost certainly result in substantial dislocations among growers and growing areas, between competing and interchangeable agricultural commodities, and in international trade of foods and other agricultural crops. We know of no basis for the contention that association officials, or USDA regulators, will be able to establish prices in individual negotiations, in each growing area, within each state or region, and among commodities so as to assure that substantial dislocations will not result.

It is particularly surprising that a bill with the avowed purpose of increasing prices for agricultural commodities would be advanced for serious consideration at a time when the nation is already caught in an inflationary spiral. No amount of talk about "stabilizing" prices can avoid the fact that the intent of the bill is to assure higher prices to farmers. Whether or not the legislation can deliver on that promise is another matter, but the concept of the bill is clear.

Indeed, the legislation virtually invites a cozy relationship between associations and handlers, at the expense of consumers.

Processors and other handlers would be forced to negotiate with accredited associations with the intent of reaching agreement on price and other terms of sale. Failure of a processor to accept the price demands of the association will either put him out of business, subject him to charges of unfair practice in a protracted enforcement proceeding, or force him to compulsory arbitration with the price to be established by the Secretary of Agriculture or his delegate. Faced with those alternatives, handlers may decide that they might as well join the program rather than fight it. After all, someone has to process and market the food supply of the country, and as long as all processors are under this compulsory obligation to deal with designated bargaining associations, individual processors may well decide that they will try to reach an accommodation with the associations, in the hope and expectation that they can pass the higher prices along to consumers. Remember, all processors of all commodities will be subject to the same requirement of compulsory bargaining, USDA enforcement, and binding arbitration. The consumers, with nowhere else to go for their food supply, will have no option other than pay the higher prices passed along to them in the supermarket.

I would like to turn for a moment to another aspect of this legislation which will have very substantial economic consequences. The bill would require compulsory bargaining and dues check-off only with associations that have been accredited by the Department of Agriculture, and only for those processors designated for dealing with the accredited associations. Accreditation of an association is thus an invaluable right, promising great economic advantage to the organizers of the association, and posing a very substantial threat to the processors who will be designated to deal with the accredited association.

As a consequence it is inevitable that the accreditation proceedings before the Department of Agriculture will be intensely controversial and bitterly contested. In view of the prize to be gained it can be expected that there will be competing applications by association organizers, and that the accreditation proceedings will require resolution of many competing claims. The standards for accreditation are only generally stated in the bill, and the presiding USDA officials will be asked to resolve such questions as whether an association is in fact owned or controlled by producers, whether the contracts between the association represents a sufficient number of producers or a sufficient volume of product to enable it to function effectively as an agent in bargaining, and whether the identified handlers are in fact appropriate for designation as dealing with the applicant association. These issues and others will be raised not only between competing applicant associations, but also by those processors who are identified for designation in the proceeding.

If only a few such certification proceedings were contemplated then possibly a relatively modest staff could be expected to handle the job. Keep in mind, however, that the bill is applicable to all agricultural commodities in all areas of the country. The benefits to be awarded are great, and organizers will certainly race to Washington to assert representation of producers of hundreds of agricultural commodities in each area of the country. Assuming, as we must, that associations will be accredited on a commodity-by-commodity basis, companies processing many crops will obviously find themselves involved in a large number of accreditation proceedings.

We have no reliable way of estimating the cost to the government of establishing a bureaucracy adequate to deal with the accreditation process. One possible analogy would be the cost to the government of establishing virtually overnight a new National Labor Relations Board. Failure on the part of Congress and the Department of Agriculture to provide an adequate bureaucracy to deal with the accreditation process would result in a massive snarl and could have no effect other than to create widespread uncertainty and confusion throughout the agricultural economy.

Once associations have been accredited, the Secretary of Agriculture would be required under the bill to maintain supervision of the accredited associations, to review annual reports, and to require the submission of information which will enable him to determine whether the associations continue to meet the standards of accreditation. If a question is raised as to whether an association continues to meet those standards, then appropriate revocation proceedings must be initiated, and again those proceedings will be featured by intensive controversy, substantial costs and protracted delays.

The cost of administering the accreditation process would constitute only part of the economic burden of the legislation upon the government. An equally large bureaucracy would be necessary for investigating, considering and resolving charges of unfair practices on the part of the associations and handlers. Difficult questions would arise as to whether a processor or association had exercised good faith in the course of bargaining. Because good faith is necessarily a matter of intent, it would be essential for the administrative law judge to take testimony and attempt to resolve competing contentions. In every instance in which an association and a processor failed to reach agreement, one or both parties to the negotiations could be expected to file charges of bad faith negotiation or some other unfair practice.

Equally difficult questions are raised under the provision of the bill which purports to require that a handler offer no more favorable terms to nonmembers of an association than he has offered to members through the association. Any change in market conditions, product quality, weather, or international demand can be expected to result in changes in the price of a commodity, and yet whenever a processor found it necessary or desirable to offer a higher price because of such circumstances, he could expect to be charged with violating the Act and be required to justify the higher price in a USDA enforcement proceeding. Even if a handler is able to convince the hearing officer as to the good faith of the higher price to nonmembers, he will have been forced to suffer the delay, burden and cost necessarily resulting from the administrative proceeding.

In estimating the number of these enforcement proceedings, it must be kept in mind that each handler, for each product he handles, will be involved in a separate negotiation with an accredited association. Each such negotiation will provide countless opportunities for charges of bad faith, unfair dealing and discrimination.

In addition to the cost and inflationary pressures of this bill, there is the very real threat that significant portions of the nation's food supply could be held hostage to lengthy administrative proceedings.

The size and cost of the bureaucracy necessary to handle this entirely new, nationwide regulatory process is impossible to predict at this stage. Suffice it to say that this bill is squarely in conflict with Presidential and Congressional support for economic deregulation and regulatory reform. Whereas some economic regulatory agencies are phasing out or reducing their involvement in the marketplace, this bill would require the establishment of a massive new bureaucracy for administration and enforcement of compulsory agricultural bargaining.

More importantly, there has been no showing whatever of a need or justification for this dramatic departure from the free market system. Abuses of the competitive process are subject to severe sanctions under the antitrust laws. The Agricultural Fair Practices Act was enacted for the very purpose of preventing harassment, discrimination or coercion of farmers. We have seen no basis for the contention that these laws are inadequate or ineffective or that abuses exist which require further consideration of legislative solutions. In my state I can assure you that farmers have a wide range of choices available to them, and that they will decide to grow vegetables for canning only if they are satisfied that the pre-season contract prices available to them are satisfactory. The current system is working, and it is effective.

The threat that this bill poses to growers and processors of all sizes--and particularly to smaller enterprises--is illustrated in Michigan, which enacted its Agricultural Marketing and Bargaining Act in 1972. This state law is similar to the proposed National Agricultural Bargaining Act of 1979. The Michigan Canners and Freezers Association challenged the Michigan law in court in 1974

A final resolution of the case has not been reached.

In court, testimony by food processors consistently indicated that the noncompetitive bargaining under the Michigan law has resulted in inflated prices unrelated to supply and demand. For apples, the Michigan price was as much as 45 percent above out-of-state competitive prices; kraut cabbage was 12 percent higher in 1977 than out-of-state prices.

The immediate impact of inflated commodity prices fell on Michigan processors. Several of them went out of business or closed their Michigan plants. Others bought at competitive prices outside Michigan and shipped them into the state. Some companies testified they had canceled expansion plans in Michigan or initiated construction of plants in other states.

For those Michigan processors who continued to buy raw products under the state bargaining law, they found immediate consumer resistance to higher prices. Many of those processors suffered serious losses.

Michigan growers testified that the state law disrupted grower-processor relationships that had been mutually beneficial. These relationships had existed for years, and in some cases for decades. Non-price allowances, such as reimbursement for hauling expenses, were no longer allowed.

The bargaining structure was not flexible enough to allow for the realities of supply and demand. Many processors have had a profit sharing plan with their growers, whereby growers would receive a supplemental payment if the price of the finished product went up. Such profit sharing was not possible under a bargaining unit.

Some farmers complained because the bargaining law deprived them of their right to sell to whom they chose. Growers also stated that the bargaining law eliminated opportunities for them to get ahead using their own business judgment. For example, "cross crop" negotiations by a single grower allowed him to get a better contract on a more profitable crop.

The overall effect of the Michigan law has thus been to reduce markets for Michigan growers. Under a national law, growers would likely face a loss of markets nationwide. Higher prices would tend to drive processors to other countries for competitively prices commodities. U.S. agricultural exports would lose competitiveness in world markets and American growers would become more vulnerable to agricultural imports. There would undoubtedly be some loss of market due to consumer resistance to higher prices.

There is every reason to believe that these shortcomings would exist with a national law as proposed in the National Agricultural Bargaining Act of 1979.

We, therefore, urge in the strongest possible terms that this Committee reject this unprecedented, extremely burdensome scheme for federal control of agricultural bargaining.

Mr. Panetta. The Subcommittee on Domestic Marketing is back in order for the consideration of H.R. 3535.

The next witness is Mr. Bruce Eaker from North Carolina Farm Bureau, Roxboro, N.C.

Welcome to the subcommittee. We appreciate your coming from North Carolina and welcome your testimony.

STATEMENT OF BRUCE EAKER, MANAGER, NORTH CAROLINA FARM BUREAU MARKETING ASSOCIATION

Mr. Eaker. Thank you, sir. Mr. Chairman and members of the subcommittee, my name is Bruce Eaker. I reside at Route 5, Roxboro, Person County, N.C.

I am presently employed as manager of the North Carolina Farm Bureau Marketing Association. I have worked as coordinator in organization of producers of several commodities and implementing marketing services for them over a period of 9 years.

Prior to 1970 and employment with North Carolina Farm Bureau, I was a farmer in Person County, N.C., producing broilers, beef cattle, and tobacco.

Over this 18-year period from 1952 to 1970, I was active in cooperative and organizational activities with the Farm Bureau and commodity cooperatives.

Drawing from my 18 years experience as a broiler grower and efforts during this time to try to help organize an effective voice for the broiler growers in this country, I will confine my remarks to this area of need as it pertains to the national agricultural bargaining bill of 1979, H.R. 3535.

When I first began to produce broilers in 1952 there were some six to seven separate business entities involved in the production-marketing process of broilers. Competition was keen and independent decisions were made by independent business people at all levels of the process. During the midfifties the terms "contract production" and "vertical integration" came into vogue and by the late fifties virtually all of the broilers in this country were being produced and marketed through this process.

Vertical integration is a system where all the functions involved in the production and marketing process of a commodity are incorporated in one control center either by capital ownership or contract arrangement.

The most normal arrangement in the broiler industry is for the company to own all facilities except the farms and houses for the growout phase. This service is farmed out or contracted out with individual farm families in a community.

I would inject at this point that I believe the system is here to stay. It exemplifies the absolute ultimate in economic efficiency and it provides the consuming public a high quality meat product at reasonable cost.

My concern and purpose here today is not to edify or condemn the system but to point out to you the unenviable position it places upon the farm family engaged in broiler production and hopefully convince you that this piece of legislation, H.R. 3535, is not only needed but imperative to the continued success and long range welfare of a group of people who provide a substantial amount of the meat diet for the tables of this country and around the world.

The broiler growers in this country, approximately 40,000 of them, provide about 50 percent or an estimated billion dollars-plus of the invested capital required for this tremendous industry.

In addition, they furnish the necessary labor, husbandry, repairs, and in many cases utility costs for the growout of these birds. Yet he has little if any input in decisions that affect his contract terms which determine his labor wages and return on investment.

To my knowledge, all growout contracts in the broiler industry are unilateral and offered to the farmer on a take it or leave it basis. Once the investment is made and houses built there is limited alternative use that can be made of these facilities. He thus becomes captive to the supplier and his contract terms.

All past efforts by organized growers to meet with their contractors through elected committees have failed because the company officials have refused to recognize the association as official or accept their elected representatives as authorative spokesmen for the membership of the association.

The ability to establish bargaining units, with bargaining and mediation to be carried out in good faith, has become one of the tools whereby equity and fairplay can be brought to bear for the benefit of all concerned parties in many facets of our business and culture in this country.

With the drastic changes that have occurred in the agricultural arena in the past decade, the time has arrived that we in agriculture must have congressional authority to implement effective bargaining if we are to continue to progress and feed this Nation and much of the world even on the same basis as we have in the past.

We respectfully request that you give a favorable vote to this bill, H.R. 3535, and lend your support and influence to see it through the Congress.

Thank you, Mr. Chairman.

Mr. PANETTA. Mr. Eaker, thank you for your testimony.

At the present time, do you have any association that represents the poultry producers or broiler growers in America?

Mr. EAKER. No, sir; we do not.

Mr. PANETTA. Has there ever been an effort to put together that kind of association?

Mr. EAKER. Oh, yes; there was an effort over a period of 6 to 8 years through the North Carolina Farm Bureau but, as I pointed out, the difficulties that we ran into caused us to put this on the shelf for the time being until we can get some favorable legislation which will be an encouragement to these people to come on in and let's get on with the job.

Mr. PANETTA. Do the buyers who contract at the present time contract out with an individual grower or growers?

Mr. EAKER. Would you repeat that, please?

Mr. PANETTA. Do the buyers now for broilers buy on an individual basis contract, on an individual basis with an individual grower?

Mr. EAKER. Yes.

Mr. PANETTA. That is the way they operate now?

Mr. EAKER. Yes.

Mr. PANETTA. Has there been a willingness among the producers or do they feel a need to come together into a group or is each kind of operating on his own?

Mr. **Eaker**. I have not been in contact with too many of our broiler people in the last 2 or 3 years.

Prior to that, there were areas where there was a definite need and a willingness to participate. But because of some of the feedback and difficulties that were experienced they were reluctant to really come in with sufficient numbers to make it effective.

Mr. **Panetta**. How does it operate now; does the buyer sit down or just say, look, I can only pay so much and that's it, or is there some negotiation that goes on between the buyer and producer?

Mr. **Eaker**. No negotiations that I am aware of, Mr. Chairman.

The contract and the changes in contracts, when those are affected at the company level, then the new instrument is given to the field man and they are told to go sell it to the producers or to tell the producers that their next flock of birds will be on a new contract and this is it, and there is no differential or negotiation made between one grower and another grower and another that I am aware of.

In other words, each company has its own contract for their particular group of growers, and there is variation between contracts in the different companies.

Mr. **Panetta**. There is a difference in price between the contracts of different companies?

Mr. **Eaker**. Difference in terms of the contract which ultimately would mean a difference in prices, yes.

In North Carolina the variation will run anywhere from—I am talking about the end payout—probably $80 per 1,000 up to as much as $130. Possibly with the efficiency factors built in they may run $150 or better on a particular food once in a while.

Mr. **Panetta**. If this legislation were passed, it allows groups on a voluntary basis to come together.

Do you see whether this would produce any more incentive for the farmers coming into an association?

Mr. **Eaker**. I feel sure that it would, Mr. Chairman.

Mr. **Panetta**. Have you asked local farmers in the Farm Bureau?

Mr. **Eaker**. I called several farm growers yesterday before leaving home and discussed this issue with them.

They said even though we are faring better than we did 5 years ago there is still room for improvement, and we would be in favor of some help in this area.

Mr. **Panetta**. Mr. Eaker, thank you very much for taking the time to come before us this morning to testify.

Mr. **Eaker**. Thank you very much, Mr. Chairman.

Mr. **Panetta**. We are going to exercise the prerogative of the Chair to revise the witness list right now, because I understand Mr. Jack Anderson, who is from Minnesota, has to catch a plane at 11:30, so I will recognize Mr. Jack Anderson at this point for his testimony so he can make his commitment.

STATEMENT OF JACK ANDERSON, FARMER, MINNESOTA IRRIGATORS ASSOCIATION

Mr. **Anderson**. Thank you, Mr. Chairman.

I have to catch a plane shortly after 12, but I have to leave here at 11:30.

I would like to say my name is Jack Anderson, not related biologically or otherwise to the famous Jack Anderson, the columnist.

I am a farmer from Stearns County, Bonanza Valley, Minn. With my two sons, we own and operate a diversified farm of 2,100 acres. All of our crops are raised under irrigation. Our principal crops are field corn. Additionally, we raise under contract 250 acres of seed corn for Green Giant. The remaining 1,000 acres is in field corn.

We also have a farrow to finish hog operation and a cattle feeding operation. I have been in farming all my life. I am past State president of the State Irrigators Association and also a member of the Farmer's Union and Farm Bureau.

I am here speaking on behalf of our fellow irrigators who grow specialty crops in central Minnesota. We oppose this proposed legislation on four counts:

No. 1, because the present law is working.

No. 2, because this promotes large scale bargaining or could promote it.

No. 3, because this proposal includes mandatory binding arbitration, and

No. 4, because this legislation would establish "slush funds" through the checkoff procedure.

The present law is working. Presently, processors cannot discriminate against growers and their organizations in accordance with the 1967 law which is the Agricultural Fair Practices Law.

I can cite an example because of the several droughts we had in the Central United States in 1976. Green Giant desired sweet corn from irrigated acreage in our area to reduce the risk of drought. Their initial offer was refused by the members of our association. After two or three negotiating sessions the company and our association agreed on a contract. Each year since 1976 we have bargained to an agreement for our crops.

This is an example of bargaining which works and continues to work because farmers with similar interests banded together to make it work. If the present law is replaced, farmers run a real risk that associations will be bargaining for farmers with dissimilar interests.

This proposal would promote large-scale bargaining. To the extent organizations seek to represent larger and larger areas, the wishes of small area organizations such as ours are lost in the shuffle. Keep in mind that farming is a diverse operation.

Farmers differ in the crops they grow, the quality of these crops, the land in which they are grown and the management practices which are used to grow those crops.

In 1976, a State certified bargaining organization outside our small area attempted to represent us. This organization included farmers whose land and practices were different from ours. If they had been successful, our interests would have been hurt and our area would not have been developed for vegetable crops and seed growing.

Minnesota has a bargaining law which requires processors to bargain with certified grower organizations. The law does not work because the certified organization no longer represents growers. By contrast, promotional organizations like ours are not certified but bargain effectively with processors because we represent growers with identical interests.

This proposal includes mandatory binding arbitration. To work, this must be binding on both the farmer and the processor. Yet, we want to avoid another Federal bureaucracy, setting farmers' prices and requiring farmers to grow a particular crop, when there may be a more profitable alternative.

For example, even after our association agrees with Green Giant or DeKalb on the price for peas and seed corn, we farmers are free to sign or not sign the company contract. The reason we wouldn't sign is because another crop, such as field corn, may bring a better price. Under mandatory arbitration we would lose this flexibility.

This proposal would permit checkoffs which would require processors to deduct from proceeds due growers an amount fixed by the bargaining association. The checkoff would occur whether or not the farmer agrees to it or not. We do not want slush funds established for organization efforts.

This opposition is not to be confused with checkoffs for the promotion of the product, such as the pork industry, which we have historically supported.

In conclusion, we are opposed to unionizing farmers. Farmers are one of the last examples of free enterprise; let's leave it that way.

Thank you for the opportunity of testifying.

If there are any questions I would be happy to answer them.

Mr. Panetta. Mr. Anderson, thank you for your testimony.

How do you respond to those who testified that the present law is not working, that they are not able, as a bargaining association, to meet and bargain with processors who refuse to bargain with them?

Mr. Anderson. Can they discipline their own members? That is the question I ask. If they cannot control their own production how can they bargain effectively?

If the processing company goes into this area and signs up 75 percent of the production and 25 percent are trying to bargain and hold out, he doesn't care if he gets the other 25 percent.

Mr. Panetta. Well, you have a bargaining association that represents farmers who are willing to participate in that. The processors won't sit down and negotiate with that group at all. That is the experience in some areas.

You are saying what then?

Mr. Anderson. I say they got a market that needs 10,000 acres of sweet corn. They have to operate that plant, and if they don't get any production signed up for that plant they are not going to shut it down. They are going to do their best to bargain with that group, are they not?

Mr. Panetta. Unless they can get it from someplace else.

Mr. Anderson. That is true.

Mr. Panetta. I guess that is the problem. They can always turn to other groups or other farmers and not have to sit down and negotiate.

Mr. Anderson. Back in 1976 they said, Green Giant wanted 10,000 acres of irrigated sweet corn. They went to our group and got a contract. They said we are going to get those acres. We made a few telephone calls and we were trying to oppose the organization statewide, and they couldn't sign any contracts any place because their contract wasn't adaptable to the management required for organization, and we got a real good contract. You have to discipline your group if you are going to bargain.

Mr. **PANETTA**. You also raise the objection on the checkoff funds, but I assume if the members vote to do that then you have no objection to that. Most groups do have some kind of dust-gathering procedure?

Mr. **ANDERSON**. Very true, as long as it isn't on a mandatory basis.

Mr. **PANETTA**. Mr. Findley, do you have any questions?

Mr. **FINDLEY**. Mr. Anderson, does your organization deal in soybeans or other grains, or is it strictly vegetables?

Mr. **ANDERSON**. Strictly vegetables. We are not a vehicle. We are more of a promotional organization, but we do keep track of growers and set up committees to keep the communications open between different areas in our State.

We don't say we are going into a contract for this job or that job. We try to promote new production and a fair return for the farmer.

Mr. **FINDLEY**. Mr. Chairman, I do have some very serious concerns about section (5)(b) on page 7, but it seems to me I should wait until there is a witness who deals in grains and cease the need for hedging.

Mr. **PANETTA**. Thank you, Mr. Findley.

Mr. Anderson, thank you for testifying. Have a safe trip back.

Mr. **ANDERSON**. Thank you for putting me ahead of the others.

Mr. **PANETTA**. The next witness is Mr. Jerry Heilig, who is vice president of the Washington Potato Growers Association in Washington.

Welcome to the subcommittee, and we appreciate your being put out of line. You may proceed.

STATEMENT OF JERRY HEILIG, VICE PRESIDENT, WASHINGTON POTATO GROWERS ASSOCIATION, OTHELLO, WASH.

Mr. **HEILIG**. Thank you, Mr. Chairman.

I am Jerry Heilig, vice president of the Washington Potato Growers Association.

Mr. Chairman and members of the committee, first I would like to digress some from the text of my presentation, if that is agreeable with the Chair.

I am pleased to have this opportunity to express our views on H.R. 3535, the National Agricultural Bargaining Act of 1979.

First, let me give you a very short history of the Washington Potato Growers Association.

WPGA is the only potato bargaining cooperative in Washington. The Washington Potato Growers Association, as it is known today, was originally the Potato Division of the Washington Agricultural Marketing Association. WAMA was formed in 1967 and consisted of three divisions; potatoes, cherries, and grapes.

Over the years WAMA's grower committees have been successful in obtaining the best possible price for its member-growers under some very difficult marketing conditions.

I for one have been actively involved in the negotiations process for the past 12 years.

The potato division directors of WAMA decided in April 1976 that it would be advantageous to form a separate potato organization. During June of that year the affairs of the potato division were concluded and Washington Potato Growers Association moved in their new offices in Othello, Wash.

WPGA is an agricultural cooperative incorporated under Washington laws.

Presently, our membership is 194 growers. There are approximately 300 potato growers in the State.

Each member-grower is required to own one share of common stock and to pay an assessment on all potatoes processed. These assessments are deducted from member-grower returns and remitted to the association by the processor.

The question has been raised about this portion of the bill, and I can assure you that this certainly is not a problem. We have been doing it for years and successfully. In addition to that, the processors remit to our association copies of the account sales summary of all of our member-growers, and we compile all the statistics that are derived from these returns.

Mr. **PANETTA**. Mr. Heilig, I am sorry to interrupt you. As I said, today is going to be a busy day.

We have a live quorum on the floor to be followed in 5 minutes by a vote. We will have to go over there and register our presence.

I would appreciate it if you would maintain your position and we will try to reassemble here in 10 or 15 minutes.

Mr. **HEILIG**. Thank you.

[Brief recess taken.]

Mr. **PANETTA**. The subcommittee is back in order in consideration of H.R. 3535, and we will resume with the witness, Mr. Jerry Heilig.

Proceed, Mr. Heilig.

Mr. **HEILIG**. Each member-grower is required to own one share of common stock. These assessments are deducted from member-grower returns and remitted to the association by the processor.

The question has been raised about this portion of the bill, and I can assure you that it is certainly not a problem. We have been doing this for a number of years. In addition to the assessments, we also collect an account sales summary of each member-grower in that sense, and we are officers and compile this information and data.

Bargaining committees are established each year by the board of directors. Those committees are usually made up of growers that grow for that particular processor. The manager and assistant manager provide backup information and assist each bargaining group.

Contract negotiations usually begin in late January each year and are normally concluded by April. As well as negotiating for price of potatoes, the committee also negotiates all other terms and conditions of the contract including grades, inspection, payment schedules, delivery allowances, storage increments and quality incentives. The result of the negotiations is an approved contract for use between grower and processor.

The potato industry in the State of Washington has developed rapidly in the last 20 years. The on-farm dollar value of the potato industry has increased from under $10 million in 1958 to over $144 million in 1978. The total dollar value generated to the Washington State's economy exceeds $1 billion.

In 1978 the potato acreage was 190,000 and total production was over 50 million hundredweights.

Washington State ranks number two in the Nation in terms of total production and number one in terms of yield per acre.

At the present time 85 percent of our total potato production is processed, so you can understand why we are concerned about this legislation.

There are 10 potato processing plants in the State of Washington. Our organization negotiates contracts with 6 of the 10 plants. We do not negotiate with four plants. Two of the four plants are owned by one company, therefore it is three processors that we do not negotiate with in Washington.

However, we did negotiate with two of the three processors in previous years. One of these processors circumvented the association by encouraging members to resign from the association. The other processor encouraged new growers to start growing potatoes or purchased potatoes from nonmember growers.

There is another related situation that is causing added problems. There are three processing plants in northern Oregon that purchase potatoes in Washington. These plants are close to southern Washington where the area is similar and only the Columbia River separates the two production areas.

Presently there is no grower organization and many growers are concerned about joining an organization for fear of losing their existing contracts. Most of these growers are large corporate operations.

This is complicated by the fact that two processors have formed a large corporate farming operation that grows approximately 12,000 acres of potatoes for their own processing plants.

The expected acreage in northern Oregon in 1979 is approximately 36,000 acres. This 12,000 acres represents one-third of the Russet Burbank acreage raised in the area, so you can readily understand the fear and concerns of the growers involved there.

The average return to the grower is approximately $10 per ton less for nonassociation contracts compared to association negotiated contracts. These inequities are considerably more when you realize that grower costs of production have increased 10 percent this past year while contract prices remained the same.

One point that this committee must recognize is that if agriculture is to survive in our national economy, we must have a fair return for products sold. Agriculture cannot continue to bear the brunt of spiralling inflation.

The major weakness of existing legislation that pertains to agriculture is that it does not require a processor to bargain with a grower association.

It is becoming increasingly difficult to deal with these processors. They are becoming larger and fewer in numbers where previously they were owned by 10 companies. The size and market power disparities often can and do force noncompetitive prices and inequitable terms on our producers as well as the responsible processors in our area. These processors are competing in the same marketplace with different raw product costs.

The Agricultural Fair Practices Act has been largely ineffective in allowing producers to bargain for their sole means of revenue. This act allows producers to organize voluntarily and is supposed to prohibit discrimination by buyers because of membership in an association.

However, the act has failed because the right of producers to negotiate with a buyer through their association is not assured. The buyer has no obligation to recognize a bargaining association even though the producers joined the association for the express purpose of having it negotiate contracts on their behalf with the buyer.

This type of legislation doesn't cost; it pays. Maintaining a healthy agriculture must be a concern of all legislators. The Economics, Statistics, and Cooperative Service of USDA estimates that if all producers of processed fruits and vegetables were able to receive 10 percent more for their products and the processors passed all of these increased costs on to the consumers, the consumer food bill would go up by 1.5 percent.

Going one step further, in the potato industry the producer receives approximately 2½ cents per pound for his raw product. The processor receives 25 to 28 cents per pound for the finished product and you, as the consumer, pays $2 per pound at your local fast-food outlet for frozen French fries. If you go into a sit-down restaurant it exceeds that price.

One argument put forward by opposition to this bill is that producers would demand excessively high prices for their product. This is absurd. Any price increase in perishable products is limited by competition from a vast array of domestic and international agricultural products and synthetics. In addition, high prices encourage new growers and resultant lower prices.

Also, price advances are limited by the highly competitive nature of the food industry and particularly the fast-food business. Each potato growing area in North America is competing for the same market, and this in itself prevents excessive pricing.

Our association is a member of the Potato Marketing Association of North America and also Tri-State Potato Bargaining Association. We work closely with those people, but at the same time we have to realize they have processors in their area and they are in fact competing with the fast-food chains.

So for one area to have excessively high prices over the other area is certainly not a practical situation.

Many times in the past agricultural organizations have requested support programs or subsidy payments. This legislation is not asking for any kind of support program; it simply requests straightfoward self-help legislation.

Let me emphasize this is simple legislation that will enable growers to help themselves, if they so desire.

In conclusion, Mr. Chairman, we are not asking you to support legislation that will give agriculture an unfair advantage, but rather we are asking you to support legislation that will give agricultural producers an even break in the bargaining process.

Mr. **Panetta**. Thank you, Mr. Heilig. I appreciate your testimony.

The focus I would like to center on is the question about the Agricultural Practices Act. There is testimony of those that oppose this legislation and they have stated that the present law is sufficient.

One of the points made in your testimony is that the Agricultural Practices Act has been largely ineffective.

Why has it been ineffective? What is the basic problem with that act as it stands now?

Mr. **Heilig**. In our particular area, our experience we have been in a rapidly expanding region. It isn't a static area like many areas. It has been growing very rapidly.

We had a major influx of processing plants and, of course, new ground is going under irrigation and additional production.

As this has taken place, we go through periods when perhaps the processing expansion exceeds the production, and vice versa, the production expansion exceeds the processing capability.

We have been initially, as I said, those plants that are in the State of Washington, they were owned by 10 different companies and have been absorbed to the point where there are now only 6 companies involved.

As they enlarged and expanded the acreage and expansion has moved southward out of the central part of the State into the Columbia River area, those processors in that area have been successful in discouraging growers to join our organization on the northern side of the river, either becoming part of our organization or forming their own.

They will go out as a new grower comes into the area, and one of the things that has happened that we know is a fact is they will ask the grower if he is a member of the association.

He says, no, and then they award contracts and in fact have been told, well, I am glad you are not a member of the association because if you were we wouldn't be able to give you a contract.

Mr. **Panetta**. Well, as I understand, the Agricultural Practices Act pretty much prohibits that kind of discrimination against the associations. In other words, if it can be established that in fact a producer says, well, you are an association, I am not going to deal with you, that violates the law.

Why is that a problem in terms of enforcement?

Mr. **Heilig**. As I am sure you are aware, the only way to enforce is through the courts of the United States. One association has in fact filed a grievance and it has been 3 years and they still haven't made it to court. That is a problem in itself.

Second, a grower would tell us, as an example, that that in fact has happened but is very, very reluctant because of the vulnerability of him as an individual in his relationship to a large conglomerate processor to go to court, that in fact he said that to him.

One individual grower is almost inundated by the size of the conglomerates. Our processors are in fact conglomerates. They are multinational. They are very afraid of that.

We have a situation, one processor that happens to be in Moses Lake who I grew for since the day they opened their doors in 1975, decided they were going to go outside our association. Many of our member growers were not allowed to grow potatoes with them. They go outside and encourage people to grow potatoes. They told member growers, well, we can't sign a contact with you as long as you are a member of our association.

If you were not a member of the association then we could. We had about five or six of those growers that grew for that processor and then in fact resigned that following winter from our association, so that they could maintain their contract basis with that particular processor.

Mr. PANETTA. Thank you.

Mr. Findley will proceed with the questions.

Mr. FINDLEY. Mr. Heilig, I assume you have read section 5(b). The first sentence of that subsection reads as follows:

> If a handler purchases a product from other producers under terms more favorable to such producers than the terms negotiated with an accredited association for such product, he shall offer the same terms to an accredited association.

I assume that potatoes are traded on the futures market. I know it has been a controversial experience over the years but it is my understanding futures trading in potatoes does continue.

I doubt, and this is just a guess on my part, that the futures is used to the extent grain is used. The futures market is used for hedging purposes so it may be you are not the best witneses to direct this question to but I would like to voice my concern, raise the question and if you have any response to it, fine, and perhaps other witnesses who will come later may be able to comment on it.

It strikes me that this provision that I have just read is unworkable especially as it applies to soybeans and other grains. It would be in my view impossible for any processor to handle this particular feature.

Let's assume, for example, that your association sells 10 million bushels of potatoes to a processor at x dollars. That processor in turn will either hedge the purchase or if it were a soybean or other grain item by selling a future in soybeans, or he would sell in the case of soybeans the oil and meal against the purchase, figuring in a nominal margin or a normal margin.

However, he would have to purchase the balance of his beans in the free market and that free market would change minute by minute.

I assume it does in the potato market too. He may have to pay, due to changes in the market conditions, a considerably higher price for this balance than he would for the original hedging operation. He is constantly hedging.

This provision would require, as I read it, for him to go back to your association, and let us assume he had to pay a little higher price on some of his market operations than the original hedging. He would have to pay you that higher price. That is the way I read it.

I think in that circumstance it would be impossible for him to operate normally. I am not sure this provision of the bill is a key provision. I would hope it could come out.

I think maybe there is a way we can improve the legislation enhancing the bargaining position of farmers. If there is a good way to do it, I am for it. But it would be most unfortunate if the bill becomes law with a provision like this.

I think it would be equally unworkable in the case of vegetables. Let's assume that I am the Hunt Co. on the west coast and I bought from a bargaining association 5,000 tons of tomatoes which I am going to make into tomato paste.

In turn I will sell the canned tomato paste to chain stores against that purchase. Maybe I would have to buy a good deal of tomato paste from another organization and the crop is such I have to pay more on the second step of my operation.

It is obvious with changes in market conditions I can't in turn pay the original bargaining association more than my original agreement because I have sold the product against that purchase. That is standard operating procedure. You have to do it for financing. It is the way bankers insist it be done.

In other words, whether it is vegetables or grain, and I presume it is the same for potatoes, hedging has to go on and I don't see how hedging can function with section 5(b) in place.

Do you have any comment on that?

Mr. HEILIG. First of all, I don't foresee it to be the problem in the context that you do in the respect that I view this legislation as advance forward contracting bargaining. In the potato industry and in many of the processing commodities we forward contract our potatoes in the spring of the year hopefully prior to planting time.

The processor may contract 65–70 percent of his needs. He is willing to take a hedge on the marketplace as to what it is going to do by fall. Then he buys on the open market fresh market sales thereafter because he pays either more or less. The fresh market basis doesn't require he has to pay more on that forward contract.

They have had a futures contract in Maine for years, although we haven't had one in Russett, Burbank, or Western production until 2 years ago. There is a futures market for western potatoes although not a very viable one at this time.

Mr. PANETTA. I apologize for interrupting. We do have a quorum on the floor that we have to make plus another 5-minute vote. We would appreciate it if you would hold on until we get back.

[Brief recess taken.]

Mr. PANETTA. The Subcommittee on Domestic Marketing is back in order again for the consideration of H.R. 3535.

I apologize for the interruption. You were responding to Mr. Findley's question. Was there anything else you wanted to add to that response?

Mr. HEILIG. I can't remember where we finished up but his question was concerning the processors being able to hedge against their contracts, and in the fresh fruits and vegetables I think primarily the way most of those are accomplished is not through the futures market as perhaps they would be in the grains but with the end user or wherever they are going to sell their finished product.

In the case of potatoes, if they contract a certain production with the growers at a given price in estimating their processing costs, then they also enter into contracts with their buyers primarily the fast food chains that will in fact cover those particular costs for that particular product.

We have had discussions with some of the major fast food chains in trying to establish multiyear contracts where we would set up and, as a grower's organization in negotiation with processors, sign 2- or 3-year contracts with certain escalators based on certain conditions, and the processor would enter into a like kind of contract with the fast food chain with a certain supply based on similar escalation so the fast food chain would be assured of product at given prices.

Those are very preliminary discussions but discussions that I think may in the future progress. We are kind of excited about it because it gives additional stability to the individual grower knowing in fact he can sign a contract for a period of more than 1 year where he can plan and arrange financing and so forth so he isn't working on a year-to-year basis and never knowing whether he is going to have a contract or not.

In the grains I don't know. I can't say that I have a real good explanation or answer for Mr. Findley in respect to the grains but in fruits and vegetables I don't see that to be a problem at all.

Mr. PANETTA. Thank you very much for your testimony. I appreciate your coming and testifying and also apologize for the interruptions.

The next witness is Mr. Ernest Phillips, a farmer from Williamson, N.Y., accompanied by Mr. Gerard Bourgeois, Mr. David Sharp and Mr. George Mueller.

STATEMENT OF ERNEST E. PHILLIPS, FARMER, WILLIAMSON, N.Y., ACCOMPANIED BY GERARD BOURGEOIS, DAIRY FARMER; DAVID SHARP, FRUITGROWER; AND GEORGE MUELLER, DAIRY FARMER

Mr. PHILLIPS. We especially appreciate this opportunity to have individual farmers who are right out there in the field and to have the chance to present this.

Mr. Chairman, we think we are organized with our remarks here to the point that even though these gentlemen were not scheduled we would keep within the time limit if you would permit. We think they have some points that would interest you.

I am Ernest Phillips from Williamson, N.Y. Our farm is a family operation raising vegetables for processing, and it involves my father, brother, son, two nephews, and myself. We are all completely opposed to this legislation.

I have with me today three farmer friends who are also opposed to this legislation. They are Gerard Bourgeois and George Mueller, both dairy farmers, and David Sharp, a fruitgrower.

We are all Farm Bureau members and think it is the best farm organization in the country. We agree with most any of the Farm Bureau policies except this one. It is sad for us to see the honorable Farm Bureau, champion of free enterprise, which worked so hard to get Government out of agriculture, submit to the militants who ask for chains for our agricultural industry.

All is not peaches and cream in the Farm Bureau over this policy. We would like you to know that the 1978 New York State Farm Bureau Convention at Lake Placid, the delegate body found that the nearly 20-year-old policy to support collective bargaining was so wanting in credibility that they voted for a year's restudy.

Gerry Bourgeois' county rebelled at supporting this bargaining policy. Gerry also has a letter from Farm Bureau President Grant admitting that the policy is controversial.

What we would like this committee to recognize is that even though the major farm organizations have gotten together to support this bill, there are plenty of farmers throughout the country who know this kind of legislation would be bad for the farmer as well as the consumer.

The following is the briefest of reasons why H.R. 3535 and the collective bargaining it will encourage will be a disaster for our industry:

One, it represents the introduction of coercion and force in what should be a peaceful transaction.

Two, it will result in prices higher than a free exchange would provide, thus creating a false indicator of market wants.

Three, this false indicator will stimulate unwanted production, resulting in oversupply.

Fourth, natural competitive advantages of the area are compromised by the higher artificial prices, and buyers tend to seek more attractive areas of supply, including areas outside of our country.

Five, with overproduction and weakening markets, bargaining will have created a distress area.

Six, food prices will move higher for the consumer.

Seven, foreign sales will be more difficult, reducing agriculture's real contribution to balancing foreign exchange.

Eight, the whole thrust of this legislation would be directed against private buyers and not against co-ops. This would tend to discourage private markets so that the producer will have only co-ops to sell to—if he can afford to buy the necessary stock in the co-op, and if the co-op is willing to make it available.

Now, what I call a sleeper occurs as this whole process takes place, and it is this: With the higher price and stimulated production, the buyer tends to buy only the best of the product, because he is paying more anyway, and more product is available to choose from.

Thus, the farmer with the lower quality has all the surplus for which there is no market. So the Congress, responding to the call to help the farmer will have effectively put out of business the farmer most in need.

Figures I have seen indicate that currently 20 percent of the farmers are producing 80 percent of our total production. We believe that if this bill becomes law, an even smaller percent of farmers would produce a greater portion of the total than would otherwise be the case, resulting in further distress in the farming community.

Added to this mess is the fact that the higher than free market price will attract new and more capable producers, further adding to wasteful surplus.

Rather than pass this legislation, if the Congress must do something, it would be better to crank up some of those idiotic old programs of paying farmers not to produce than to mess up the unhampered marketplace, which is serving consumers so well.

I had the personal experience in the early 1950's of helping to create a bargaining association known as Western New York Canning Crop Growers, Inc. We did not need Federal legislation to be successful. We raised New York tomato prices from fifth in the Nation to as high as first place one year. Of course, we lost our tomato markets, one by one—but we were very successful. We did the same thing to broccoli and peas.

So help me, I don't know why we didn't wake up.

I have attached a copy of a letter, which I sent to all my county Farm Bureau members in 1969, for the following three purposes: The letter illustrates how long the drive for bargaining has been going on; it provides you with a unique message; and it also provides you with an indication of the sincerity of our position.

At a time when working people are opting to actually un-join unions in record numbers, it would be the crime of the century to tie such an anchor around the neck of our most important industry.

Dave Sharp is a fruitgrower from Rose, N.Y., and he has had some personal experiences with a private buyer in the area.

[The letter referred to is held in the subcommittee file.]

STATEMENT OF DAVID SHARP, JI-MEVA FARMS, NORTH ROSE, N.Y.

Mr. SHARP. I presented my testimony, Mr. Chairman, and I have shortened it but I would like to dwell on some key points that bore me.

I am David Sharp, an applegrower from Ji-Meva Farms in North Rose, N.Y. Ji-Meva Farms is a family operation and has been in the family for three generations. We are opposed to bargaining bill H.R. 3535.

This legislation takes away individual freedoms and would affect every producer in a different degree of control. Growers vary greatly in the amount of apples marketed through processing cooperatives, fresh fruit and independent processors.

For example, a grower involved solely in a processing cooperative or fresh fruit marketing program would not be affected at all by this bill, while one selling solely to independent processors would be totally controlled. Many of the supporters of this bill are those growers who are not affected by its provisions.

I feel this bill would have an adverse effect on independent processors and their decisions to expand as well as their competitive positions worldwide.

In summary, it must be remembered that their final processed products are sold on the marketplace in competition with those products sold by cooperatives.

[The prepared statement of Mr. Sharp follows:]

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July 10, 1979
Washington, DC

I am David Sharp from Ji-Meva Farms in North Rose, New York. Ji-Meva Farms is a family operation and has been in the family for three generations. My brother, Jim, and I have been responsible for its operation for the past 25 years. We are opposed to the bargaining bill HR3535 in question. Having been a Wayne County Farm Bureau Director for several years in the early 1960's, I am very alarmed at the position this organization has taken on bargaining legislation for the sale of agricultural commodities. It certainly was not their position in the early years of my experience with Farm Bureau. This legislation takes away individual freedoms and would affect every producer in a different degree of control. Growers vary greatly in the amount of apples marketed thru co-operatives, fresh fruit and independent processors. For example, a grower involved solely in a co-operative or fresh fruit marketing program would have no controls while one selling solely to independent processors would be totally controlled. These bills are designed to harass independent processors which would have adverse affects on their decisions to expand, also, their competitive positions world wide. However, it must be remembered that their final processed products are sold on the market place in competition with those products sold by co-operatives.

I would like to say that my goal in the fruit business is to make money and be a successful farmer. There is nobody that would like a higher price for apples than I. This means that I can expand and make more as any business man would conclude. History has proven time and time again that if there is a great demand or high profit potential for agricultural products or even copying machines that there will be enterprising business men there to full-fill that demand and produce more. Too often we give up our individual rights to make decisions on our own and run to Washington for legislation that will give guaranteed security and end up complaining about those making decisions later. I have no doubt in my mind that bargaining will have short term effect on price and if one looks long range and into the future it spells complex problems. I feel this would leave quite a mess for

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our children or future farmers in very much the same way some things have gone in our society where security has been guaranteed. I am referring to complex problems like supply control, tree credits, allotments, policing and many other inefficiencies that would increase costs to the consumer. We have to believe the free market price makes the most efficient way to produce and will give the consumer ample supplies at the lowest possible price. The increased productivity and incentive for producers and individuals is the key to curing the rampant inflation problem of today. I feel if a grower wants the long dollar that there are very good co-operatives that could give him planned and orderly marketing if he so desires, but, I think he will find they can't always receive what they would like for their product either. They are in a competitive market too.

I would like to leave you with these questions:

1) If Duffy Mott Company is so bad as many people think, why do so many flock year after year to sell apples for their cash price?
2) Why has there been an abundance of apples if it is so un-profitable to grow them?
3) Why does it take compulsary legislation of this type for something good (IF IT IS GOOD) to work?
4) How much confusion, red tape and disharmony do you want between you and your market?

I think major farm organizations could have a positive influence on price by:

1) Reporting accurate market conditions
2) Making contacts with producers to place produce where the demand is
3) Develop market alternatives
4) Create harmony among growers and processors developing a climate for our industries that would expand those all-ready here while attracting new ones to our area thus increasing the demand for our products.

David E. Sharp
Ji-Meva Farm
"Place of Fruit"

STATEMENT OF GERARD BOURGEOIS, OTSEGO COUNTY FARM BUREAU, INC., MORRIS, N.Y.

Mr. BOURGEOIS. My name is Gerard Bourgeois. Our testimony is as follows. I am also, by the way, an officer of Otsego County Farm Bureau.

Otsego County Farm Bureau has been opposed to this type of compulsory collective bargaining legislation for many years. Last year we led a movement to have the whole bargaining issue restudied by the New York State Farm Bureau.

We were successful at the 1979 annual meeting of NYFB, in convincing the voting delegates to support our position. Our opposition to this bill is based on the following points:

First, legislation is now law which allows farmers to join together voluntarily for purposes of marketing and/or bargaining for their products.

Second, this bill would force unwilling participation by those farmers who would not voluntarily join in a collective bargaining effort.

Third, this bill would lead to a more intensive concentration of power in the agricultural area than would be good for the U.S. economy and U.S. consumers.

Fourth, the main thrust of advocates of this bill is the improvement of the prices they receive for farm products. Any increase in price which restricts demand would have to result in a production quota system of some kind. In other words, supply would have to be adjusted to meet new demand signals.

Fifth, if prices received were the same as, that which supply and demand would produce without bargaining, the whole mechanism would be superfluous and expensive.

Sixth, organization people are very interested in the check-off dues system which would be part of such legislation, if not initially, then in a short time.

Seventh, as a Farm Bureau member of 20 years, I realize, along with a majority of our Otsego County Farm Bureau members, that this bill is contrary to stated Farm Bureau principles and the American Farm Bureau Creed.

Eighth, such a bill would treat both the farmer who doesn't want to participate and the buyer who does not want to bargain as a second-class citizen, subject to the tyranny of the majority.

We ask that in the interest of our country and of our agriculture that you vote against this bill.

Mr. PANETTA. Mr. Mueller.

STATEMENT OF GEORGE MUELLER, CLIFTON SPRINGS, N.Y.

Mr. MUELLER. My name is George Mueller. My wife and I and five children operate a 200-cow dairy and we raise 100 acres of sweet corn as a cash crop in Clifton Springs, N.Y.

I am very much opposed to collective bargaining making a foothold in agriculture. I would like to leave my testimony and talk from a few notes. I have three quick points I would like to make.

Leaders constantly are saying all we need is the ability to put a price on our product like every other business. This is not true. Other businesses don't do this. Giant General Motors must follow the market, it has to price its Chevette under Volkswagen. The market tells it so. Nor can the processor pay less in the market for products over a period of years or he will lose his growers.

The farmer and processor alike both must accept a price that the market sets. All businessmen are controlled by the market. Farmers are businessmen.

Point No. 2: Farm leaders also say all we want is a fair price. This is also not true. I know of many farmers who would give their eyeteeth if the processor would just take them on. He may not pay a fair price every year but the average—and I emphasize average—price paid must be fair.

Why else would farmers be waiting in line to grow for processors?

A third point is that collective bargaining, if it comes to agriculture, will result in two possible things: One is that bargaining demands will be so mild that supply and demand will still function and nothing will be accomplished except encumbering agriculture with a new bureaucracy and a lot of redtape.

The other possibility, if bargaining comes to agriculture, and this is what many people are after, is that bargaining demands will enhance the price. An enhanced price brings on more production. It also causes substitution and less consumption and necessitates tight acreage allotments, requires fruits and vegetables to be left in the field to rot and all kinds of quotas for farmers which would greatly increase costs to the consumer.

Low prices after collective bargaining comes will no longer be available to clear the market which is so important, and also to discourage excess production which is so important. We will have walked blindly into a situation that requires supply management.

My own personal future is fairly secure but I have five children who I hope some day will operate my farm. I have enjoyed the free enterprise system. I hope that we don't foolishly go into collective bargaining. I want them to have the same opportunities that I had.

This bill that you are talking about here today is a fairly mild bill. President Grant of the Farm Bureau mentioned that yesterday. The State bills are a lot more strict. But like the Arabs know, if you let the nose of the camel into your tent, pretty soon you have the whole camel and your tent is knocked over.

Section 8 of your bill is the real teeth of this bill. It gives the Secretary of Agriculture almost unlimited power at his discretion. I wouldn't give that much power to my fondest friend. Agriculture has been very fair in dealing with consumers and farmers up to this point and we have no complaints. But this is a tremendous amount of power to give one man.

The point of the 1967 Fair Practices Act is done away with by this bill and some of those provisions are not put into the new bill, particularly the protection against the individual who doesn't want to belong to an association.

Those are my comments.

Mr. **Panetta**. Thank you, gentlemen, for the presentation of your testimony. One of the issues you raise is the issue of collective bargaining as if it hasn't arrived. It has already arrived in agriculture. That is the reason we have co-ops. That is what co-ops essentially do. If they do it and there are farmers who want to do it, shouldn't they be protected in the process?

It is not as if we are talking about a situation in which you don't have co-ops. There are cooperatives and the purpose of cooperatives is for farmers to get together to collectively bargain and sell their product.

Mr. PHILLIPS. There are co-ops that package products and put them on the marketplace and sell them as if they were private buyers. There are other farmer co-ops for the sole purpose of collective bargaining. There are two distinct types of co-ops.

What we were discussing here in one instance was if we don't like the private buyer, we can buy into and become part of a processing cooperative.

The other this bill refers to is the bargaining type of cooperative. This is what we think is a danger. Essentially it is not that collective bargaining is not here; it is. I was a part of it back in the early fifties. It is when the collective bargaining of a co-op is successful that the danger arrives.

What it does to the marketplace in restricting, in causing increases in prices to the consumer—this is where the damage comes.

The processor has in our minds less interest in this than we have as farmers because it is going to affect our markets.

Mr. PANETTA. But you cannot stop that process. You talk about the free enterprise system. I think that is an inherent part of it, the ability of people to join together for the purpose of bargaining.

Mr. BOURGEOIS. May I add to what Ernie said?

We have not objected to the Capper-Volstead Act, to the Fair Practices Act. We are objecting to the fact this act has mandatory provisions neither of the previous acts had. If things happen as a result of legislation which does not mandate that to happen, we do not object. We object to the fact this bill has mandatory provisions.

We are concerned because we work very hard in New York State to keep a State law from coming into being which had some real teeth in it. In this law the teeth are vague, they are not as visible as in the New York or Michigan law. But we know in the process, as George said, once the camel's nose is in the tent pretty soon the whole camel is in, and these other teeth are going to have to come into this law.

Mr. PANETTA. You have heard some of the testimony of the gentlemen who just preceded you, a farmer out in Washington who is with a co-op, and his contention is that the present act—and I take it it is a position that you support in terms of the present act—is not working effectively in terms of coercion being brought against the cooperative bargaining operation. If you support the present law, and there is evidence it is not working, what do you do?

Mr. BOURGEOIS. We find in this legislation more than any other people who are very sincere on both sides have very different positions. If the object of any law is to enhance price, you are never going to satisfy everyone in the marketplace. We feel the market should take care of this function.

Mr. PHILLIPS. In our area, fruitgrowers are putting a lot of pressure on for this sort of thing. It has been my observation and experience when I was in western New York if you truly have growers interested in this collective bargaining co-op you will have the membership to control the product, as one of the earlier gentlemen said and you do not need further legislation.

Our cooperative was proof of that. You have to have the interest of the growers. To date they have not been able to get the interest of the growers. They are just aware that this is leading them down a blind alley that is going to cut off their markets.

Duffy-Mott Co. is a 4-million-bushel plant in my town. It used to be owned by a family. It is now owned by American Tobacco. They get enough hassle from Joe Califano over their product. If they get adverse publicity about the farmers rioting at their plant, they will not need that. The farmers are going to find they will be without that plant. They will close it, and it won't bother their stock one bit. This is a danger. We will be at a disadvantage anywhere else.

Mr. PANETTA. If the farmers have decided they do not want to do that at the present time I am not sure they would not decide not to do it even under this legislation.

Mr. PHILLIPS. I am sure there are some farmers that would if they believed they had the processor right where they wanted him, quote unquote. Still, that does not change the economics of the marketplace, that they will in fact lose those markets. It is the farmer that is struggling usually that cannot provide the greatest advantage either in scheduling loads, reliability, quality of product. They are going to go by the wayside. So long as the competition is keen enough, these guys can stay in. Eventually it changes.

Mr. PANETTA. That's part of the process, though. The fellow who is not producing the quality product, not competing with someone else, may very well fall by the wayside. Your argument is that fellow ought to be protected in the process, I guess?

Mr. PHILLIPS. My statement only refers to the concern of those who are promoting this, that this fellow needs protection. I know and everyone knows that the person with the least ability is not going to stay.

Mr. PANETTA. But that was your argument, the farmer with the lower quality will therefore have no market as a result of this bill?

Mr. PHILLIPS. Right. This would not take place as fast, might not affect a lot of these fellows for some time to come if the larger farmers did not have the potential muscle.

You know, in the cling peach industry in southern California, a lot are not opened by farmers any more; they are investments of doctors and lawyers. It is a locked-in deal and it is so good. Some of our smaller farmers cannot cope with this, and they will automatically put out because of the processes of this law, not by natural attrition.

Mr. PANETTA. I am not so sure it is always a problem of deciding what causes a certain result. That may happen in any event. Large cooperative farms are a reality in this country. They are pushing out smaller farmers all the time. It is not because of this legislation or other legislation. It is essentially the nature of what is happening in our agricultural area. I am not sure that isn't a trend that isn't already taking place.

I think one of the points that was mentioned by one of the gentlemen is that this bill would lead to a more intensive concentration of power in the agricultural area. If that is the case, I tell you, most of the people who come here before the Agriculture

Committee and testify are seeking just exactly that kind of power, because they feel agriculture does not have it in the present system, but that is something that I think we have to look at in terms of whether in fact the present law is working to protect farmers or not.

I do appreciate your testimony. It is good to have the testimony of people who are independent and who want to stay that way. I appreciate that.

We are running in on the lunch hour. We have six more witnesses. I am going to take a break for lunch and we will have some votes on the floor in the interim. So what I would like to do is adjourn the hearing until 2 o'clock and then we can proceed at that time and complete the testimony. I apologize to those who are still waiting around, but I think it is better if we all have lunch.

[Whereupon, at 12:45 p.m., the subcommittee recessed until 2 p.m. of the same day.]

AFTERNOON SESSION

Mr. **PANETTA**. The Subcommittee on Domestic Marketing resumes its hearings on H.R. 3535.

The next witness is Mr. Neal P. Gillen with the American Cotton Shippers Association, Washington, D.C.

Mr. Gillen, you may proceed.

STATEMENT OF NEAL P. GILLEN, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN COTTON SHIPPERS ASSOCIATION, WASHINGTON, D.C.

Mr. **GILLEN**. I have a rather comprehensive statement submitted for the record and I will try to summarize the particular points covered in the testimony.

I am Neal Gillen of Washington, D.C., vice president and general counsel of the American Cotton Shippers Association. I appear today in opposition to H.R. 3535, the Agricultural Bargaining Act.

The American Cotton Shippers Association has historically opposed the adoption of devices that would serve to interfere with the natural forces of the marketplace, a market that, unlike those of other agricultural commodities, is faced with strong and determined competition from domestic and foreign produced synthetic fibers and foreign grown cotton.

Other segments of the industry will submit testimony for the record voicing their objection to this legislation including the National Cotton Council of America, National Cottonseed Products Association, the Texas Independent Ginners Association, and the Cotton Warehouse Association of America.

At the outset, I should emphasize that our organization is not opposed to the right of farmers to form agricultural cooperatives or bargaining associations.

Public policy has long recognized the desirability of safeguarding the freedom of farmers and other individuals or groups to form together in cooperative associations or unions; and we believe it is equally important to safeguard the freedom of the farmers or working people not to join a cooperative bargaining association or union, and to deal with noncooperative organizations whenever they believe their interest is better served thereby.

The right to organize is in itself a powerful weapon. The knowledge of this power has provided an adequate insurance policy for the cotton farmer in his dealings with the cotton trade.

Given these rights, the great majority of producers, approximately 75 percent, have chosen to process and market their cotton through independent ginners, warehousemen and merchants who in turn have invested hundreds of millions of dollars in facilities to better serve the needs of their independent producer customers.

Bargaining for cotton will disrupt a successful and competitive market system and stimulate the use of foreign cotton and synthetic fiber.

Collective bargaining has no place in the context of the cotton marketing system. Its adoption will disrupt the system and lead to the increased use of synthetic fibers and foreign grown cotton.

Approximately one-half of the cotton produced in the United States is consumed in export markets. Our foreign markets have expanded, but our domestic markets have contracted because of massive displacement by synthetic fibers which now account for almost 70 percent of the total U.S. fiber market. This is a role reversal for cotton, for only 20 years ago we enjoyed almost 70 percent of the U.S. fiber market.

The cotton industry is working hard to win back these markets. Our export expansion program has been aided substantially by the market-oriented philosophy of legislation enacted since 1970. Increased prices through bargaining, absent export subsidies, will cost us our export markets. Increased prices on the domestic front will only stimulate additional use of synthetics.

The cotton market is worldwide. It reacts almost immediately to a drought in northeast Brazil, a hailstorm in Lubbock, or to heavy rains in Pakistan.

Its pricing structure is complex, governed by price determinations which must consider 532 different combinations of grades and staple lengths in addition to micronaire and pressley factors. It has an active futures market complemented by spot markets in various territories of the cotton belt which reflect the prices received in the most recent trades.

As stated earlier, cotton farmers presently market their cotton through cooperative marketing associations, Commodity Credit Corporation, cotton gins, compresses or warehouses, f.o.b. merchants, shippers and textile mill buyers. These competing forces provide the farmer with a choice of market alternatives and resulting competitive prices for his cotton.

The cotton market will more than likely have these reactions to a system encompassing farm bargaining:

Return to two-price system: The application of collective bargaining to the marketing of raw cotton must contemplate most seriously a return to the system of two-price cotton. As producer demands increase, they are likely to take the price of U.S. cotton above the world market price.

To maintain exports, a subsidy will be necessary. To maintain domestic markets, an offsetting price system is dictated. Such a system was utilized briefly in the 1960's. It proved too costly, too controversial, was unacceptable to the U.S. textile industry and was dispatched by Congress in 1964.

Phaseout of price support system: Producers of commodities such as cotton, wheat, and feed grains have no desire to disband the present price support system. The successful application of bargaining to those commodities will provide the needed emphasis for those who oppose these programs. If, by chance, bargaining succeeded, would there be a need for continuing the present price support system?

Stimulate increased use of synthetic fibers: In 1967 the mere threat of a short crop resulted in prices that were too high for the consuming market to absorb. The results were devastating, cotton consumption suffered its most severe reduction in history—total U.S. cotton use dropping from 49.2 percent in 1967 to 42.3 percent in 1968. Since that time we have lost almost half of the 1968 market share.

Regional concentrations of power forcing shifts in production patterns: Certain areas of the cotton belt are more adaptive to centralized collective bargaining because of the high concentration of producers in given geographical locations.

The San Joaquin Valley of California, Arizona, and the high plains areas of Texas and Oklahoma, stand to gain the most from a collective bargaining system. Within these areas are the largest farms, some of the best cotton land, and the most efficient producers who together account for approximately 70 percent of total United States cotton production.

What good does collective bargaining do for the 80,000 cotton farmers widely dispersed in the less efficient growing areas of the other 12 Cotton Belt States when the more powerfully organized collective bargaining associations, with more cotton to sell, can reduce their market share to levels that will dictate shifts to the production of other crops.

Aggressive bargaining could result in production shifts.

This situation is more likely to affect the cotton producers in the less efficient areas. If these producers do organize they must be careful not to demand prices which would send buyers to the more powerful collective bargaining cooperatives.

Being too timid would most likely be rewarded only by fill-in business, and gradually the association would die for lack of strength in a marketplace which will have shifted its emphasis to high volume business.

Congressional review of agricultural marketing noted that cotton marketing practices enhanced price competition benefiting cotton producers.

The Senate Committee on Agriculture, Nutrition, and Forestry considered the Agricultural Fair Practices Act in extensive public hearings and executive sessions in 1966 and 1967. The committee debate centered on the necessity of such legislation for various commodities. The committee concluded that the uniqueness of the marketing systems of cotton and tobacco rendered unnecessary their inclusion in the legislation.

In 1974 the House Cotton Subcommittee conducted in depth hearings of the cotton marketing system. Every facet of cotton marketing was closely examined. Producer representatives from all areas of the cotton belt testified. No criticism was lodged against the marketing system. The concept of collective bargaining was never mentioned because the existing system was price competitive and cotton producers saw no need for change.

What has occurred in the marketing of cotton, since Congress last reviewed the subject, which would justify the implementation of the collective bargaining concept? The cotton marketing system has been substantially improved in a number of areas.

Forward contracting is now a well established and useful marketing practice in all producing areas.

The Commodity Credit Corporation price support loan is now available for utilization by producers for periods of up to 18 months in duration.

Electronic marketing now provides individual farmers instant access to the marketplace.

Establishment of the Commodity Futures Trading Commission provides for closer scrutiny of the price discovery aspects of cotton futures trading.

Export sales are reported weekly to producers and the public by the Department of Agriculture.

The Department of Agriculture, the media, and producer organizations, frequently make available to farmers current worldwide crop production and consumption estimates.

All of these developments have followed congressional findings that the cotton marketing system is most competitive, and after the rejection of the bargaining concept by this subcommittee in August 1972—all more reasons to reject the concept in 1979.

Is there a compelling need for Congress to act?

In the 10 years that Congress has considered agricultural bargaining only limited unsubstantiated allegations have been presented seeking to justify the need for legislation.

The complaints are restricted to specialty crops produced in limited growing areas. The allegations have never been verified by any committee of the Congress.

In 1968 Congress enacted the Agricultural Fair Practices Act. In its consideration little evidence was presented to either the House or Senate concerning the alleged abuses the legislation sought to eliminate. Since its enactment 11 years ago, the Department of Agriculture reports that only 21 cases have been investigated, with findings of discrimination by handlers in only 4 cases.

One can reasonably conclude that, given limited activity in the prohibited areas of conduct prior to enactment of protective legislation, little activity will occur following enactment. The more likely conclusion is that there was little, if any, justification for the Agricultural Fair Practices Act.

Lack of justification for the seminal legislation is sufficient reason to reject its would-be progeny—agricultural bargaining.

Labor bargaining versus agricultural bargaining—great distinctions abound.

Proponents of this legislation have suggested in the past that the success of organized labor in bargaining for wages, fringe benefits, and working conditions bears a direct corollary to the lot of the producing farmer. This is not so. If there is a corollary in agriculture, it applies to the employees of those who propose this legislation.

Agricultural bargaining legislation would abrogate rights granted to handlers by Congress, foster antitrust policy contrary to public interest, limit individual freedom of farmer to remain independent, create a needless Federal bureaucracy.

Analysis of H.R. 3535 brings to light a number of problems, some legal in nature, others more concerned with the practical effects of the legislation.

Congress has extended to handlers of agricultural products the right to select their customers and suppliers.

By enacting the Agricultural Fair Practices Act Congress sought to assure producers protection from specific practices of handlers of agricultural products. Equally important, Congress reaffirmed, in section 5 of the act, the basic right of handlers to select their customers and suppliers.

What dramatic events have occurred which justify a change in public policy? In the past Congress has been presented only with a few instances of unverified allegations of refusal to bargain. To mandate bargaining solely because certain people advocate it, and when the facts do not justify it, is to abrogate the basic rights of the processor to choose his own source of supply.

Antitrust practices are contrary to public interest.

The cooperative efforts of agricultural producers are adequately safeguarded by the Federal antitrust immunity afforded by the Capper-Volstead Act. This bill would expand the rights granted by Capper-Volstead which are now the subject of close scrutiny.

The "Report to the President and the Attorney General of the National Commission for the Review of Antitrust Laws and Procedures" focused on the market power of agricultural cooperatives in its discussion of the monopoly potential under existing law.

I commend its reading to the subcommittee.

I will summarize as my time seems to be up.

It is our opinion that full supply contracts will limit a farmer's choice to join bargaining associations or risk the loss of market for his crop.

I would like to refer to a dialog which took place the last time this subcommittee considered this testimony. There was a question by former Congressman Link of North Dakota:

> Mr. LINK. Would it be possible for a fraction or part of the growers of a community in a negotiating area represented by the association to sign up a full supply contract and thereby freeze all of the rest of the growers out of that market?
>
> Mr. LAUTERBACH. * * * I suppose it would be conceivable that a cooperative may supply the full needs of a handler and the handler may want this condition to exist and enter into the contract. Then the individual growers may have to seek another market * * *.

It is clear that full supply contracts have little in common with the interest of the individual farmer, but are designed for particular organizations who wish to expand the power of the organization and not necessarily that of individual farmers.

I comment on section 5(b). I quote from General Turner in a speech of 1966 where he emphasized the need for farmers to remain independent, the bureaucratic buildup, I have a number of questions which the legislation would pose and finally I finish with a recommendation that the subcommittee seek the views of the Department of Justice and the Federal Trade Commission and the Small Business Administration insofar as the potential impact this legislation might have on their loan program for agribusiness people. I will be glad to respond to any questions.

Mr. PANETTA. Thank you, Mr. Gillen.

Obviously we have another vote on the floor.

Before running off, I think your recommendations for going to the Department of Justice and the Trade Commission are good ones, at least to get their reaction to this legislation.

Your group has always opposed bargaining legislation. I get the feeling, at least in your testimony you feel there is little justification for the Agricultural Fair Practices Act as well, is that true?

Mr. GILLEN. That is correct.

Mr. PANETTA. I guess my concern is, as far as I can see the Agricultural Fair Practices Act tries to prevent against coercion and discrimination in the use of bargaining. Do you feel that should not be controlled or mandated by the Federal Government?

Mr. GILLEN. The law is on the books and I feel it should be enforced. The facts of the matter are only 21 complaints have been filed with the Department of Agriculture in an 11-year period and I believe since 1972 only 3 or 4 complaints have been filed, and only 4 cases to my knowledge have been filed in the Federal courts.

You have the option of either complaining to the Department or filing directly in the Federal court.

Mr. PANETTA. Have cotton farmers anywhere in the country come together in a bargaining cooperative of any sort?

Mr. GILLEN. There are a few farmers in California who have involved themselves into pooling arrangements, selling through independent merchants outside the five regional cooperatives. One of them, which is especially cooperative in extra-long staple cotton and the other four cooperatives, there has been no effort. There are some farmers who have joined NFO and NFO has sought out us to market that crop.

Mr. PANETTA. I see. Generally the farmers in the cotton area remain fairly independent then?

Mr. GILLEN. That is correct.

Mr. PANETTA. Thank you very much for testifying. I appreciate that. Again, the subcommittee will be in recess for 10 minutes.

[Brief recess.]

[The prepared statement of Mr. Gillen follows:]

STATEMENT OF
AMERICAN COTTON SHIPPERS ASSOCIATION
PRESENTED TO
SUBCOMMITTEE ON DOMESTIC MARKETING, CONSUMER
RELATIONS AND NUTRITION
COMMITTEE ON AGRICULTURE, U.S. HOUSE OF REPRESENTATIVES
ON H.R. 3535

THE AGRICULTURAL BARGAINING ACT
JULY 11, 1979

Mr. Chairman, I am Neal P. Gillen of Washington, D.C., the Vice President and General Counsel of the American Cotton Shippers Association. I appear today in opposition to H.R. 3535, the Agricultural Bargaining Act.

INTEREST OF AMERICAN COTTON SHIPPERS ASSOCIATION

The American Cotton Shippers Association was founded in 1924 and is basically comprised of merchants, shippers and exporters of raw cotton who are members of five federated associations, located in sixteen states throughout the cotton belt:

Arkansas-Missouri Cotton Trade Association
Atlantic Cotton Association
Southern Cotton Association
Texas Cotton Association
Western Cotton Shippers Association

The 525 member firms of the ACSA handle over 80% of the domestic cotton crop and 90% of the export market. The Association takes an active part in promoting the increased use of cotton in the United States and throughout the world; establishes with other trade groups national and international standards for trade, collaborates with producers throughout the cotton belt in formulating farm programs, and cooperates with government agencies in the administration of such programs.

FUNCTION OF COTTON MERCHANT

Cotton merchants have a dual function of buying and selling cotton, including the assumption of the time, quality and price risks. The merchants purchase and assemble millions of individual bales of cotton offered for sale by approximately one-hundred thousand farmers producing cotton in sixteen states across the cotton belt. Over 18 varieties of U.S. cotton are produced in several hundred combinations of quality and staple lengths (due to the various types of seed, soil, weather conditions, and harvesting practices). The merchant classes each bale according to the quality factors and assembles the cotton of the same grade, staple length, color and character into even-running lots in warehouses at various locations in the different states. Cotton is sold to textile mills in spinners' markets in even-running lots at various times and delivery is made to locations designated by the various textile mills. The merchant also performs the function of storing and concentrating cotton and the financing of surplus spot cotton including the excess ginnings over consumption during the major harvest months.

Therefore, the members of our Association are subject to the requirements of this legislation since their business activities are encompassed by the definition of "handler" in Section 3 (c) in that they engage in:

1) The acquisition of (cotton) agricultural products from producers or associations of producers for processing or sale;

2) They grade and handle the cotton, arrange for packaging (rebaleing or recompression), storage, and shipment to the textile mills;

3) They contract or negotiate contracts and make other arrangements written and oral with producers or associations of producers with respect to production and or marketing of cotton; and

4) In some instances they act as agent or broker for handlers in the performance of the acts specified above.

COTTON INDUSTRY OPPOSED TO FARM BARGAINING CONCEPT

The American Cotton Shippers Association has historically opposed the adoption of devices that would serve to interfere with the natural forces of the marketplace, a market that unlike those of other agricultural commodities is faced with strong and determined competition from domestic and foreign produced synthetic fibers and foreign grown cotton. At our 55th Annual

Meeting on May 10-11, in Memphis, Tennessee, the membership reaffirmed its policy position:

> "Farm Bargaining
>
> "Legislation designed to permit collective bargaining between producer and processors for the purpose of establishing prices or the expansion of marketing orders would have adverse effects on the orderly marketing and processing of cotton. Any legislation of this kind must exclude cotton.
>
> "The cotton producers enjoy the security and freedom of choice to market their cotton through the CCC Loan, cooperatives, cotton gins, compresses, warehouses, banks, FOB merchants, shippers and mill buyers. Present competition for producers cotton provides them with competitive bidding for the product and the pricing mechanism advocated in the farm bargaining legislation is not suitable to the cotton industry."

Other segments of the industry will submit testimony for the record voicing their objection to this legislation including the National Cotton Council of America, National Cottonseed Products Association, the Texas Independent Ginners Association, and the Cotton Warehouse Association of America.

AGRICULTURAL PRODUCERS ADEQUATELY PROTECTED BY EXISTING LAW

At the outset, I should emphasize that our organization is not opposed to the right of farmers to form agricultural cooperatives or bargaining associations. Public policy has long recognized the desirability of safeguarding the freedom of farmers and other individuals or groups to form together in cooperative associations or unions; and we believe it is equally important to safeguard the freedom of the farmers or working people not to join a cooperative bargaining association or union, and to deal with non-cooperative organizations whenever they believe their interest is better served thereby.

The Capper-Volstead Act and Section 6 of the Clayton Act permit independent farmers to join cooperative associations and to sell their products collectively, free of the basic antitrust prohibition against joint action on the part of competing sellers. Every farmer thus has a choice -- not enjoyed by other business enterprises -- to sell his or her production independently in competition with other farmers, or to band together with other farmers for the joint bargaining and sale of their products.

The right to organize is in itself a powerful weapon. The knowledge of this power has provided an adequate insurance policy for the cotton farmer in his dealings with the cotton trade.

Given these rights, the great majority of producers (approximately 75%) have chosen to process and market their cotton through independent ginners, warehouseman and merchants, who in turn, have invested hundreds of millions of dollars in facilities to better serve the needs of their independent producer customers.

BARGAINING FOR COTTON WILL DISRUPT A SUCCESSFUL AND COMPETITIVE MARKET SYSTEM AND STIMULATE THE USE OF FOREIGN COTTON AND SYNTHETIC FIBER

Collective bargaining has no place in the context of the cotton marketing system. Its adoption will disrupt the system and lead to the increased use of synthetic fibers and foreign grown cotton.

Approximately one-half of the cotton produced in the U.S. is consumed in export markets. Our foreign markets have expanded, but our domestic markets have contracted because of massive displacement by synthetic fibers which now account for almost 70% of the total U.S. fiber market. This is a role reversal for cotton -- for only 20 years ago we enjoyed almost 70% of the U.S. fiber market.

The cotton industry is working hard to win back these markets. Our export expansion program has been aided substantially by the market-oriented philosophy of legislation enacted since 1970. Increased prices through bargaining, absent export subsidies, will cost us our export markets. Increased prices on the domestic front will only stimulate additional use of synthetics.

The cotton market is world wide. It reacts almost immediately to a drought in northeast Brazil, a hailstorm in Lubbock, or to heavy rains in Pakistan. Its pricing structure is complex, governed by price determinations which must consider 532 different combinations of grades and staple lengths in addition to micronaire and pressley factors. It has an active futures market complimented by spot markets in various territories of the cotton belt which reflect the prices received in the most recent trades.

As stated earlier, cotton farmers presently market their cotton through cooperative marketing associations, Commodity Credit Corporation, cotton gins, compresses or warehouses, F.O.B. merchants, shippers and textile mill buyers. These competing forces provide the farmer with a choice of market alternatives and resulting competitive prices for his cotton.

The cotton market will more than likely have these reactions to a system encompassing farm bargaining:

I. Return to Two Price System

The application of collective bargaining to the marketing of raw cotton must contemplate most seriously a return to the system of two-price cotton. As producer demands increase they are likely to take the price of U.S. cotton above the world market price. To maintain exports a subsidy will be necessary. To maintain domestic markets an offsetting price system is dictated. Such a system was utilized briefly in the 1960's. It proved too costly, too contraversal, was unacceptable to the U.S. textile industry and was dispatched by Congress in 1964.

II. Phase Out of Price Support System

Producers of commodities such as cotton, wheat and feed grains have no desire to disband the present price support system. The successful application of bargaining to those commodities will provide the needed emphasis for those who oppose these programs. If, by chance, bargaining succeeded, would there be a need for continuing the present price support system?

III. Stimulate Increased Use of Synthetic Fibers

In 1967 the mere threat of a short crop resulted in prices that were too high for the consuming market to absorb. The results were devasting, cotton consumption suffered its most severe reduction in history -- total U.S. cotton use dropping from 49.2% in 1967 to 42.3% in 1968. Since that time we have lost almost half of the 1968 market share.

Addressing the subject of market losses, Professor Wallace Barr of Ohio State University noted that:

> "Encouraging the development and use of substitutes may be one of the most serious pitfalls to aggressive bargaining. Substitutes definitely limit the influence a bargaining association can have on price. Butter already has a readily available substitute; urea can be substituted for soybean meal; synthetics are replacing natural fibers...." (emphasis added)
>
> "Recognition needs to be given to the state of substitute technology. Meat substitute technology exists. If meat prices were bargained so aggressively as to encourage the production of meat substitutes, thus lowering the cost of their production, a substantial market loss could occur." 1/

1/ Bargaining in Agriculture, University of Missouri-Extension Division - C911 - June 1971, at page 49.

IV. Regional Concentrations of Power Forcing Shifts in Production Patterns

Certain areas of the cotton belt are more adaptive to centralized collective bargaining because of the high concentration of producers in given geographical locations. The San Joaquin Valley of California, Arizona, and the High Plains areas of Texas and Oklahoma stand to gain the most from a collective bargaining system. Within these areas are the largest farms, some of the best cotton land, and the most efficient producers who together account for approximately 70% of total U.S. cotton production.

What good does collective bargaining do for the 80,000 cotton farmers widely dispersed in the less efficient growing areas of the other twelve cotton belt states when the more powerfully organized collective bargaining associations, with more cotton to sell, can reduce their market share to levels that will dictate shifts to the production of other crops.

V. Aggressive Bargaining Could Result in Production Shifts

Professor Barr pointed out the reality of this danger, noting that:

> "A different kind of market loss can result when only part of the production of a single commodity is organized for bargaining. This could be the case where potato producers in one area of the country bargain and those elsewhere do not. If the bargaining were overly aggressive, buyers would shift to other supplying areas. This could mean closing plants and

> shifting operations to the other producing regions. A loss of market to one set of producers, in these circumstances, is a gain to another." 2/

This situation is more likely to affect the cotton producers in the less efficient areas. If these producers do organize they must be careful not to demand prices which would send buyers to the more powerful collective bargaining cooperatives. Being too timid would most likely be rewarded only by fill-in business, and gradually the association would die for lack of strength in a market place which will have shifted its emphasis to high volume business.

These factors were directly addressed by the U.S. Department of Agriculture in testimony to this Subcommittee in 1971:

> "Farmer bargaining cannot change the laws of supply and demand or do away with competing domestic and international farm products or synthetics.
>
> "Farmer bargaining probably offers limited opportunities for nationally produced products, such as feed grain, wheat, soybeans and beef which are not sold under advance contract. However, it may offer a potential for improving marketing efficiency and increasing farmer returns in fruits, vegetables, and specialty crops. Milk with its special laws is already far beyond what we are discussing here.
>
> "Farmer bargaining cannot add marketing strength where prices are set in a world market,...when the export market is substantial.
>
> "Farmer bargaining cannot, for any extended period, achieve a price beyond the basic, intrinsic value of the product, otherwise consumption decline will become inevitable." 3/

2/ Ibid.

3/ Statement of Richard Lyng, Assistant Secretary for Marketing and Consumer Services, Sept. 20, 1971.

CONGRESSIONAL REVIEW OF AGRICULTURAL MARKETING NOTED THAT COTTON MARKETING PRACTICES ENHANCED PRICE COMPETITION BENEFITTING COTTON PRODUCERS

The Senate Committee on Agriculture Nutrition and Forestry considered the Agricultural Fair Practices Act in extensive public hearings and executive sessions in 1966 and 1967. The Committee debate centered on the necessity of such legislation for various commodities. The Committee concluded that the uniqueness of the marketing systems of cotton and tobacco rendered unnecessary their inclusion in the legislation, stating in the Report that:

> "The committee gave extensive consideration to the problems of cotton and tobacco before it decided to recommend their exclusion from the act. Witnesses representing cotton ginners and warehousemen testified that they are in direct competition with cooperative cotton ginners and warehousemen. Inducements such as rebates, trucking, loans, and trading stamps, are regularly offered by both cooperatives and other handlers to attract the farmer's business. If the other handler is successful, the farmer usually does not join the cooperative; and there was considerable apprehension that such inducements, since they could result in the farmer not joining the cooperative, might fall within the prohibitions of the bill. That was not the purpose of the bill. It is not intended to lessen competition between cooperatives and other handlers; and such competition is beneficial to the farmer. While the bill has been modified in a number of respects to make it clear that normal and appropriate business dealings between a producer and a handler which incidentally may or will result in the producer's decision not to join a cooperative are not prohibited, these changes were not considered sufficient in the case of cotton handlers who are in daily competition with cooperative handlers engaged in identical handling operations, but not subject to the same injunctions.
>
> "The committee gave serious consideration to limiting the protection of the bill to bargaining cooperatives, which were not engaged in the actual handling of agricultural products in competition with other handlers. However, this

> would have excluded cooperatives which might be primarily or partly bargaining associations but also handle some portion of their members' products.
>
> "Because of the difficulty in finding language which would make it clear that a cotton handler could safely compete with a cooperative handler without being continually prepared to prove the motive for his actions, and because the evidence indicated that the cotton cooperatives did not need the protection of the bill, the committee has recommended exclusion of cotton." 4/

The House Committee on Agriculture saw no "compelling reason" to include cotton in the Agricultural Fair Practices Act, stating in the Report that:

> "(1) An amendment to delete the bill's exemption for tobacco and cotton was defeated by a voice vote. Since these crops are subject to production and marketing control and price support programs, the committee did not see any compelling reason to include them in this bill. In addition, there was no request from cotton and tobacco producer or cooperative organizations for inclusion in this legislation." 5/

In 1974 the House Cotton Subcommittee conducted indepth hearings of the Cotton Marketing System. 6/ Every facet of cotton marketing was closely examined. Producer representatives from all areas of the cotton belt testifed. No criticism was lodged against the marketing system. The concept of collective bargaining was never mentioned, because the existing system was price-competitive and cotton producers saw no need for change.

4/ Union Calendar No. 459, 90th Congress, 1st Session, Senate Report No. 474, Agricultural Fair Practices, at pages 3 & 4.

5/ 90th Congress, 1st Session, House of Representatives, Report No. 824, Agricultural Fair Practices Act, at page 4.

6/ Review of Cotton Marketing System, Hearings before the Subcommittee on Cotton, Committee on Agriculture, House of Representatives, 93rd Congress, 2nd Session, April 22-29, 1974.

What has occurred in the marketing of cotton, since Congress last reviewed the subject, which would justify the implementation of the collective bargaining concept? The cotton marketing system has been substantially improved in a number of areas.

- Forward contracting is now a well established and useful marketing practice in all producing areas. It is better understood by producers. Contracts were standardized by the industry and are fully enforceable by either party.
- The Commodity Credit Corporation price support loan is now available for utilization by producers for periods of up to 18 months in duration.
- Electronic marketing now provides individual farmers instant access to the market place.
- Establishment of the Commodity Futures Trading Commission provides for closer scrutiny of the price discovery aspects of cotton futures trading.
- Export sales are reported weekly to producers and the public by the Department of Agriculture.
- The Department of Agriculture, the media, and producer organizations frequently make available to farmers current world wide crop production and consumption estimates.

All of these developments have followed Congressional findings that the cotton marketing system is most competitive, and after the rejection of the bargaining concept by this Subcommittee in August 1972 -- all more reasons to reject the concept in 1979.

IS THERE A COMPELLING NEED FOR CONGRESS TO ACT?

In the ten years that Congress has considered agricultural bargaining only limited unsubstantiated allegations have been presented seeking to justify the need for legislation. The complaints are restricted to specialty crops produced in limited growing areas. The allegations have never been verified by any committee of the Congress.

In 1968 Congress enacted the Agricultural Fair Practices Act. In its consideration little evidence was presented to either the House or Senate concerning the alleged abuses the legislation sought to eliminate. Since its enactment eleven years ago, the Department of Agriculture reports that only twenty-one (21) cases have been investigated, with findings of discrimination by handlers in only four cases.

One can reasonably conclude, that given limited activity in the prohibited areas of conduct prior to enactment of protective legislation, little activity will occur following enactment. The more likely conclusion is that there was little if any justification for the Agricultural Fair Practices Act. Lack of justification for the seminal legislation is sufficient reason to reject its would-be progeny -- agricultural bargaining.

LIMITED APPLICABILITY OF FARM BARGAINING

The limited evidence presented to Congress isolates the segments of the agricultural economy where producers claim to need protection to perishable commodities and specialty crops. The Department of Agriculture emphasized this point in the testimony of former Assistant Secretary Lyng:

> "In summary, the Department of Agriculture recognizes that farm bargaining can be a valuable tool for producers in their efforts to improve their economic conditions, to improve their net income. We believe that farm bargaining can be of greatest value in fruits, vegetables, and specialty crops. We think farm bargaining for price has definite limitations, especially in crops where there is an active national or world market." 7/ (emphasis added)

The objections and fears raised by the opponents of the legislation are directed to the impracticality of establishing bargaining units for non-perishable crops such as cotton, wheat, feed grains, and livestock which are produced or raised on a nationwide basis; the restrictive effects on export sales of high pricing machinery or the converse prejudices to domestic consumers if a separate pricing system is adopted for export; the increased use of lower priced imports; the increased use of synthetic substitutes; and the gradual destruction of the independent agri-business community with the resulting penalties to producer and consumer alike which would result from the elimination of the competitive factor from the market place.

7/ Ibid.

LABOR BARGAINING VS. AGRICULTURAL BARGAINING
GREAT DISTINCTIONS ABOUND

Proponents of this legislation have suggested in the past that the success of organized labor in bargaining for wages, fringe benefits and working conditions bears a direct corollary to the lot of the producing farmer. This is not so. If there is a corollary in agriculture, it applies to the employees of those who propose this legislation.

Professor Barr discusses this distinction between bargaining for labor and agricultural commodities in the article previously quoted:

> "Labor Bargaining vs. Agricultural Bargaining
>
> Labor is often cited as an example of successful bargaining. Labor unions bargain for wages (a kind of price), and employment conditions and fringe benefits (comparable to terms of trade), with one plant or one firm. Employers are required by law to recognize and bargain in good faith with labor union representatives if the majority of the employees want a union. Control over the supply of labor is accomplished by either the employer or the union; and unemployed labor is cared for by union funds, unemployment insurance, or public assistance.
>
> "Labor bargaining has some similarities to commodity price bargaining in agriculture but is closer to bargaining in contractual production of farm products. The farm commodity market involves numerous products and, usually, numerous outlets. Commodities embody the resources of labor, capital, and land, not labor alone. With non-perishable agricultural commodities such as wheat, cotton, or feed grains, it is possible to withhold products but those withheld must be reckoned with sometime in the future. With perishable farm products, such as fruits, vegetables, or milk, withholding more closely resembles labor withholding or work stoppage. However, few producers can afford the total loss associated with withholding.
>
> "Where farm products are produced and delivered under production contracts, the situation resembles industrial labor

more closely. Also, the farmer is closer to being solely a laborer than is the case where he produces for a commodity market." 8/

The distinguished Farm Editor of the Lubbock Avalanche Journal, Mr. Duane Howell, also noted these differences:

> "A fallacious argument often advanced in behalf of agricultural bargaining proposals is that they can be patterned on the labor model. There are fundamental differences in negotiating on wages and in bargaining on prices or terms of sale.
>
> "For one thing, prices of farm products are much more sensitive to supply variations. In a sense, wages are more nearly administered prices. Hence, it is argued, they may need to be extracted. Theoretically, however, farm prices can be manipulated through supply controls.
>
> "Labor can bargain with no particular regard for subsequent effects on employment. If bargaining results in wages rates at which fewer workers will be employed, this merely is considered an unfortunate side effect.
>
> "BY CONTRAST, agriculture must be vitally concerned at all times with relations between supplies and prices. It cannot deny a market of some type to an agricultural producer with the same impunity accorded to labor. This means that if a price-increasing bargain is concluded in agriculture, supply controls of some type must be imposed. And a "home" must be found for all units of the commodity.
>
> "Organized labor also has the power to strike and thereby force management to negotiate toward agreement. It is the strike, primarily, that provides labor with its power. The only real strike power available to agriculture for price bargaining is the potential ability to control production or marketable supplies. Some farm economists agree that precision supply control or management - if ever achieved - indeed could produce the "desired" prices. But under these condtions, and if a given price is the only target, the question arises; Why bargain?" 9/

8/ Ibid. at page 46.

9/ Lubbock Avalanche Journal, June 8, 1971.

AGRICULTURAL BARGAINING LEGISLATION WOULD ABROGATE RIGHTS GRANTED TO HANDLERS BY CONGRESS - FOSTER ANTITRUST POLICY CONTRARY TO PUBLIC INTEREST - LIMIT INDIVIDUAL FREEDOM OF FARMER TO REMAIN INDEPENDENT - CREATE A NEEDLESS FEDERAL BUREAUCRACY

Analysis of H.R. 3535 brings to light a number of problems, some legal in nature, others more concerned with the practical effects of the legislation.

I. Congress Has Extended to Handlers of Agricultural Products the Right to Select Their Customers and Suppliers

By enacting the Agricultural Fair Practices Act Congress sought to assure producers protection from specific practices of handlers of agricultural products. Equally important, Congress reaffirmed, in Section 5 of the Act, the basic right of handlers to select their customers and suppliers. This explicit language merits close attention:

> "Nothing in this act shall prevent handler and producers from selecting their customers and suppliers for any reason other than a producer's membership in or contract with an association of producers, nor require a handler to deal with an association of producers."

Repeal of this section is a prescription for change which represents a radical departure from a competitive marketing system now providing maximum returns to producers of agricultural commodities. More importantly, the farmer and the handler will be deprived of their most cherished asset -- their independence.

What dramatic events have occurred which justify a change in public policy? In the past Congress has been presented only with a few instances of unverified allegations of refusal to bargain. To mandate bargaining solely because certain people advocate it, and when the facts do not justify it, is to abrogate the basic rights of the processor to choose his own source of supply.

II. Antitrust Practices are Contrary to Public Interest

The cooperative efforts of agricultural producers are adequately safeguarded by the federal antitrust immunity afforded by the Capper-Volstead Act. This bill would expand the rights granted by Capper-Volstead which are now the subject of close scrutiny.

The "Report to the President and the Attorney General of the National Commission for the Review of Antitrust Laws and Procedures"[10] focused on the market power of agricultural cooperatives in its discussion of the monopoly potential under existing law. The report observed that:

> "The Potential for Monopoly Under Capper-Volstead
>
> "The Commission is concerned that the Capper-Volstead Act creates the potential for cooperative monopoly. The concern has historical precedent. When the Capper-Volstead Act was being debated, the Senate originally sought an explicit limitation to insure that the Act not be deemed to authorize monopoly. The Senate later withdrew its insistence on such a provision, apparently because of assurances that cooperatives were unlikely ever to achieve monopoly.

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[10] Superintendent of Documents, U.S. Government Printing Office, 040-000-00401-7, January 22, 1979, pages 258-260.

"Today, those assurances appear to have been overly optimistic.

"Testimony before the Commission shows that the threat of monopoly by some cooperatives is now substantial. In recent years there has been an accelerating trend toward concentration in agricultural marketing. The Department of Agriculture predicts that in the future less than twenty cooperatives will control the nation's milk supply. Today it is not uncommon for one cooperative to dominate the national production of a single fruit. Some staple crop cooperatives apparently would like to attain similar market control of their commodities.

"It is thus no longer argued that cooperative monopoly is impossible. Instead it is suggested that monopoly control over a commodity by a cooperative will be unusual, and will not have the degree of market power normally associated with monopoly. Some argue that cooperatives do not present the usual danger of monopoly, because they lack control over total production. If the price is too high, excess production will bring the price back down again. Cooperatives do, however, sometimes seek ways to limit production or otherwise control the quantity sold in certain markets. These problems may be exacerbated in certain markets where marketing orders exist.

"It may also be true that a monopoly by membership is not as strong as one by ownership of resources. That is just to say, though, that monopoly by a cartel is not as powerful as monopoly by one firm. But neither type of monopoly is desirable. Nor is the argument persuasive that farmers should be allowed to develop monopoly power without restriction because they often must sell in concentrated markets.

"The Commission therefore concludes that some action is necessary to deal with the real possibility that some cooperatives will achieve monopoly power. It recognizes, however, that care must be taken not to jeopardize the competitive position of cooperatives generally.

"Possible Approaches

"There are two basic approaches that can be taken when the prospect of monopoly appears: action to prevent the development of monopoly or regulation to minimize its harm. Controlling abuse of monopoly power is the

> purpose of the undue price enhancement provision of section 2 of the Capper-Volstead Act. This rudimentary regulatory tool, however, only deals with one aspect of the monopoly problem. Moreover, its sanctions have never been imposed.
>
> "The choice of approaches for dealing with the present prospect of monopoly power is, therefore, between developing a system of regulation more extensive than section 2 of the Capper-Volstead Act or taking action to prevent creation of monopoly power. Since the prevention or dissolution of monopoly is preferable to attempts to control monopoly through regulation, the latter couse should only be chosen when the former is unavailable.
>
> "It has been said that the need to allow farmers to bargain in groups rather than as individuals also requires that there be no limitation on the size of cooperatives; that it is neither practicable nor conceptually sound to permit some farmer cooperation, while forbidding a larger amount. Yet the general rule of the economy is to allow some, but not total, "cooperation" through means such as incorporation. A compelling case for monopoly cooperatives has yet to be made. The Commission therefore believes that the better course -- that of preventing the attainment of monopoly power -- is available."

III. Full Supply Contracts Limit Farmer's Choice - Join Bargaining Association or Risk Loss of Market for Crop

An unfortunate and ultimate result of this legislation will be the evolution of full supply contracts. Nothing precludes qualified bargaining associations from entering into contracts with handlers to supply the full agricultural production requirements of such handlers.

The dangers of full supply contracts are obvious. During the consideration of similar legislation by this Subcommittee a former member voiced his concern in a dialogue with a proponent of the legislation:

> "Mr. Link. Would it be possible for a fraction or part of the growers of a community in a negotiating area represented by the association to sign up a full supply contract and thereby freeze all of the rest of the growers out of that market?
>
> "Mr. Lauterbach. ...I suppose it would be conceivable that a cooperative may supply the full needs of a handler and the handler may want this condition to exist and enter into the contract. Then the individual growers may have to seek another market...." 11/

It is clear that full supply contracts have little in common with the interest of the individual farmer, but are designed for particular organizations who wish to expand the power of the organization and not necessarily that of individual farmers.

Section 5(b) of the bill threatens farmer independence by requiring that "if a handler purchases a product from other producers under terms more favorable to such producers than the terms negotiated with an accredited association for such product, he shall offer the same terms to the accredited association...."

Section 5(b) is a radical departure from the free market system. If the bargaining association is paid 65 cents a pound for its cotton, handlers are constrained from purchasing cotton at a higher price, unless of course, they pay to the association any premium above the original purchase price. This provision compels handlers only to deal with association members and encourages full supply arrangements. Non-members are thus precluded

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11/ Question of Rep. Arthur A. Link (D-ND), to Allen Lauterbach, General Counsel, American Farm Bureau Federation, Subcommittee on Domestic Marketing and Consumer Relations, Committee on Agriculture, Public Hearings, National Agricultural Marketing & Bargaining Bills, Stenographic Minutes at page 141, Sept. 21, 1971.

from receiving a higher price. Non-members could also be denied the benefit of subsequent price rises due to an increased demand or a reduction in supply. Conversely, the bargaining association would be rewarded for market risks assumed by non-members.

It is obvious that irrespective of the intentions of the proponents, producer independence would be severely limited. If a producer is not a member of a bargaining association, he would suffer the economic consequence of being shut out of the market.

While Assistant Attorney General for Antitrust, Donald F. Turner, stressed the issue of producer independence in an address on agricultural bargaining to the National Council of Fruit and Bargaining Cooperatives in 1966. He opined that:

> "The ability to form cooperatives allow the farmers to overcome the power of the larger buyer in two ways. First, to the extent the cooperative gains some control over the supply of product, it can bargain with the buyer in order to achieve a somewhat higher price than the buyer would have to pay individual farmers selling separately. Second, the farmers may form their own cooperative marketing agencies, thus bypassing the powerful marketer who would otherwise be able to achieve an unduly high profit at the expense of the farmer.
>
> "It is important to note that this justification for the agricultural cooperative exemption is to allow the farmers to overcome exploitation and earn a reasonably competitive profit. Its purpose is not to allow a monopoly profit.
>
> "This also explains why it is important that membership in cooperatives be voluntary, that cooperatives not be permitted to coerce outsiders by shutting off their access to markets. This requirement not only protects the farmers' basic interest in freedom of association,

> but it also increases the likelihood that cooperatives will be able to earn competitive profits but unable to achieve monopoly profits."
> (emphasis added)

IV. Inevitable Buildup of Federal Agricultural Bargaining Bureaucracy

Sections 6 through 14 provide for the establishment, in the Department of Agriculture, of an agency with powers similar to those granted the National Labor Relations Board. The unnecessary expansion of the federal bureaucracy is contrary to the present direction of Regulatory Reform. Ironically, the agricultural community is in the vanguard of those concerned with the proliferation of the federal establishment.

Since this legislation provides the Department of Agriculture with powers similar to those of the NLRB, a comparison of that agency's personnel would be instructive. In 1972 we presented your Subcommittee with the following information which had been supplied to us by the Office of the General Counsel of that agency:

> "The National Labor Relations Board has 5 Board Members; 100 Hearing Examiners; 125 attorneys working directly for the Board Members in Washington, D.C.; 160 attorneys assigned to the Office of the General Counsel in Washington, D.C.; in the 31 Regional Offices there are 457 attorneys, 460 Field Examiners and 560 clerical employees; and it is estimated that another 200 clerical employees are assigned to the Washington Office."

At that time we also pointed out to the Subcommittee that "the NLRB has more cases filed before the Federal Courts of Appeal than any other agency of the Federal Government including the Department of Justice."

The experience of the NLRB suggests the inevitable buildup of a new bureaucracy in the USDA. The potential wastefulness inherent in the bargaining process is appalling. A whole new army of administrators, coordinators, mediators, investigators, and other functionaries of various titles will be required to hear complaints, make adjustments, review evidence, supervise quotas, certify bargaining associations and perform numerous other functions. These will all be federal jobs which should be considered useless and nonproductive since our present system works well without them.

Additionally, the process of agricultural bargaining will necessarily require a great amount of time and effort on the part of the participating parties. The added cost of marketing could be substantial. There are 525 member firms of the American Cotton Shippers Association and possibly 500 or more cotton textile mills who would be required to bargain with numerous collective bargaining associations in sixteen cotton producing states. Negotiation of a purchase could take weeks or even longer as is the case with labor negotiations. If we move to a system where bargaining determines price, negotiations will be a year-round process for the cotton industry. Cotton handlers and the associations would no doubt find it to their benefit to hire professional negotiators -- the cost implications are quite obvious.

IMPORTANT QUESTIONS NOT ANSWERED BY H.R. 3535

This statement has attempted to deal in some detail with the basic questions raised by the legislation under consideration. There are many questions that still remain unanswered. Proponents of the bill would have the USDA supply the answers. We submit it is the legislative responsibility of the Subcommittee to resolve these questions, and that such a perogative should not be relegated to an agency in the Department.

Some of these questions are as follows:

1. Assume that a number of producers across the cotton belt have in the past dealt with a large handler, and these producers belong to different bargaining associations. With which association would the handler be required to initiate bargaining?

2. What if the first two or three associations could supply all the firm's needs; what obligation would the handler have to bargain with the other associations?

3. The resulting competition among collective bargaining associations for markets will necessarily result in competition for members. Will the pressure to seek agreements that will attract and maintain membership in the short-term result in the long-term loss of markets for the producer members?

4. What will be the affects on the futures market? If futures markets are not available to permit inventories to be hedged, will this add to the cost of marketing?

5. Will the check-off provision for dues and fees jeopardize the Cotton Research and Promotion Program which operates on funds collected by handlers from cotton producers?

6. Assume that bargaining reached an impasse, the handler was accused of not engaging in good faith bargaining, charges were filed, and the handler lost business as a result of the charges being filed, and suffered a loss in profits. If the USDA or a federal court eventually rules that the handler was innocent of the charges, would the bargaining association be liable for the financial losses suffered by the handler and his employees?

7. Is is good faith bargaining for an association to negotiate with one, two, or more handlers, if in fact the association can supply the needs of not more than one handler?

8. What course of conduct must a handler pursue if there is more than one bargaining association in a given area and he has a prior course of dealing with all of them?

9. Can an association operate in any area it chooses, overlapping the jurisdiction of other associations?

10. What precautions will be taken in the event of delays in bargaining to assure producers sufficient time to schedule their plantings?

11. Assume that a handler bargains in good faith with an independent producer and reaches agreement before negotiating with a bargaining association. Will this be regarded as not bargaining in good faith if the handler is precluded from bargaining with the association?

12. What protection is afforded the handler if the association contracts to sell a larger supply at a lower price to another handler?

CONCLUSION

Was it not the avowed purpose of the Agricultural Fair Practices Act to facilitate farmers' to join bargaining associations by prohibiting unfair practices which discouraged membership?

We submit that what the Subcommittee is now considering is legislation that will compel processors to bargain and result in coercing farmers to join collective bargaining associations.

Such a draconian course is not justified. In no other segment of the farm economy is the factor of competition more prevelant than in the cotton industry. We believe that there is no real or government fabricated substitute for competition.

Competition is the most effective governor of the allocation of resources and the major factor in balancing supply and demand. This is the only mechanism which can best reward efficiency while providing our nation and the world markets with their requirements for food and fiber.

In view of the uncertainties raised by this legislation, particularly in the area of antitrust, we respectfully recommend that the Subcommittee seek the views of the Department of Justice and the Federal Trade Commission. Because of the potential effects on competition and the enforcement powers vested in the Department of Agriculture, we recommend the bill be referred to the Judiciary Committee for additional consideration.

In conclusion we would also recommend that the views of the Small Business Administration be solicited in order to ascertain the affects this legislation would have on their loan programs for independent agri-business operations.

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Mr. Panetta. The Subcommittee on Domestic Marketing resumes its hearings on H.R. 3535.

The next witness is Mr. Clarence Palmby of the Continental Grain for U.S. Chamber of Commerce.

Thank you for waiting and your patience. It has been a rough day and I thank you for sticking around. You may proceed.

STATEMENT OF CLARENCE PALMBY, VICE PRESIDENT, CONTINENTAL GRAIN CO.; MEMBER, BOARD OF DIRECTORS AND CHAIRMAN, FOOD AND AGRICULTURE COMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES, ACCOMPANIED BY E. CLINTON STOKES, DIRECTOR, NATIONAL CHAMBER OF COMMERCE FOOD AND AGRICULTURAL PROGRAMS

Mr. Palmby. Thank you, Mr. Chairman. I am Clarence Palmby, vice president of Continental Grain Co. and I am also a member of the board of directors and chairman of the Food and Agriculture Committee of the Chamber of Commerce of the United States.

My remarks are presented in behalf of the national chamber and that is the role in which I am here today.

With me is Mr. E. Clinton Stokes, who directs the chamber's food and agricultural programs.

The chamber is unalterably opposed to H.R. 3535, the National Agricultural Bargaining Act of 1979. It is contrary to the principles of our competitive market system, would be inflationary, gives the Secretary of Agriculture excessive powers, and would create a bureaucratic nightmare to carry out its administrative and intermediary provisions.

At the outset, let me emphasize that the national chamber recognizes and supports the legal right that agricultural producers have had, for more than half a century, to join together voluntarily in associations to market their products for mutual benefit.

Producers can market their products collectively as long as the cooperative does not act to unduly enhance prices.

Many of these cooperatives are currently bargaining successfully with processors and other handlers. Prices resulting from such negotiations reflect free and competitive market incentives, and help to assure maximum efficiency of production and marketing activities, as well as adequate supplies of food and fiber.

Now, rather briefly on the major provisions and short comments on them:

No. 1. Set up a rigid system under the administration of the Secretary of Agriculture whereby handlers would be required to negotiate with designated producer bargaining associations.

The major objective of the proposed legislation is to put as much pressure as feasible on processors and other buyers, referred to in the bill as handlers of agricultural products, to negotiate for the purchase of these products through officially sanctioned producer bargaining associations.

Accordingly, the bill provides for qualified associations of producers of any agricultural product to petition the Secretary for accreditation, or approval to bargain with designated handlers on the sale of agricultural products in behalf of its members. The Secretary would (*a*) accredit the petitioning producer association as a bargaining association if it represents a sufficient number of producers or its members represent a sufficient quantity of agricultural products; and (*b*) designate the handler or handlers petitioned by the bargaining association. Such handlers would then be required to negotiate in good faith with the petitioning association with respect to price, terms of sales, and other provisions for the products offered by the association.

While the legislation does not require either party to reach an agreement, the handlers would have virtually no alternative. This is because of the authority for the Secretary to intervene, explained under the second point below. The underlying objective of the sponsors of this legislation is to acquire sufficient control over the sources of supplies to negotiate higher prices for agricultural products.

This pressure to negotiate through bargaining associations would be felt by both handlers and individual producers. The designated handler might contract with an accredited bargaining association for his bulk supplies of average quality products. But he also may have need for a specific variety and quality of a crop for his processing requirements.

He might be willing to pay a higher price to an individual producer, known from past experience to be able to meet his requirements.

However, if he did so, he would be required, under the proposed law, also to pay the same higher price for the products contracted for through the bargaining association, notwithstanding differences in quality or changes in market prices or supply conditions.

The handler would thus be discouraged from buying any significant quantity of products directly from independent producers. The independent producer then would have no realistic alternative except to join the accredited bargaining association if he wants a market for his products.

Thus, H.R. 3535 would, in effect, deny individual producers and their traditional handler/customers the opportunity to deal directly with each other. The advocates of the proposed legislation would then have accomplished the objective of gaining control over the marketing of agricultural products, and could raise prices accordingly.

No. 2. Authorize the Secretary of Agriculture to intervene in the mediation of disputes and, in some cases, impose compulsory and binding arbitration between handlers and producer bargaining associations.

If a handler and the bargaining association fail to reach a complete agreement on the terms of the contract, the Secretary could, upon the request of either party, provide mediation services in proposing and implementing arbitration agreements. If the Secretary determines that the impasse may cause substantial economic hardship to producers or handlers involved, he could impose a procedure for compulsory and binding arbitration.

This places the Secretary in a powerful and unique position of intervention in the traditional private negotiating processes between two sectors of commerce and industry. The obvious intent is to strengthen the power of producer bargaining associations at the expense of both the handlers and independent producers. This is more power than any Government official should have in our competitive market enterprise system.

No. 3. Impose a checkoff for service on handlers, payable to producer bargaining associations. The proposed legislation requires the designated handler to deduct from his payment to a producer—for products purchased through the accredited bargaining association—the amount of a fee which will be paid to the association. This, of course, is an added burden on the handler who has no voice in the decision and reaps no benefits from the service. It is a clear windfall for the association.

No. 4. Establish broad administrative powers under the Secretary with respect to violations, penalties and collection of information. In addition to his authority to accredit producer bargaining associations, designate handlers and intervene in bargaining disputes, the Secretary would be given broad enforcement powers and administrative responsibilities.

He would have authority to administer complaints of violation of the unfair practices provisions, issue cease and desist orders, award damages and issue rules and regulations. He would have independent enforcement authority, including issuing injunctions and levying civil penalties up to $1,000 per day for violations. The Secretary may also require the keeping and reporting of extensive records and other information, conduct hearings and issue subpenas. Under the collection of information provisions, USDA could enter business offices and inspect and copy any records or information relating to matters in question. All records and information received would be available to the public unless a legal claim of confidentiality is made under the United States Code.

This is a tremendous amount of authority to place in the hands of an executive agency that is in an advocacy position with respect to a sector of the industry under its jurisdiction.

No. 5. Repeal the Agricultural Fair Practices Act of 1967. This law was enacted with industrywide support to protect producers and their bargaining associations from coercion and other forms of improper inducements by handlers. The act also explicitly protects the right of individual producers to join or refrain from joining an agricultural marketing cooperative or other associations of producers. The national chamber and virtually all sectors of the industry supported passage of the Fair Practices Act. Since its enactment only a limited number of complaints have been reported, and very few of these complaints have produced sufficient evidence to reach the courts.

H.R. 3535 rewrites the obligations and prohibitions applicable to associations and handlers. While the prohibitions are similar, there would be no protection for individual producers against pressure, from bargaining associations, to become their members.

It is interesting to note, however, that the proposed legislation differs also from the 1967 act in that bargaining associations, which also perform processing and other handler-type functions, would be excluded from the definition of handler. Thus, they would be exempted from the restrictions imposed on handlers with respect to negotiations with individual producers outside the association's membership. This provision would constitute an additional exemption under the antitrust laws.

In conclusion, the most effective way for producer bargaining associations to become successful as bargaining agents is to offer more attractive contracts and services than the handlers can obtain by negotiating directly with many individual producers. Handlers are interested in product quality, seed varieties, growing conditions, harvesting schedules, and delivery arrangements, as well as agreements on prices contingent on supplies and market prospects.

If bargaining associations can provide these services more efficiently, it will be in the best interests of handlers to negotiate with bargaining associations. Handlers will not be reluctant to pursue whichever contracting arrangement is the most economical and reliable. Mandatory Federal intervention is not needed or desirable to protect the innovative and efficient producer bargaining association.

The consequences of enacting H.R. 3535 would be far-reaching. It would give farmers less incentive to produce maximum quality products at minimum production costs. It would further inflate consumer prices. Our agricultural products would be less competitive in world markets. It would add tremendously to the workload and budgetary costs of the Department of Agriculture.

H.R. 3535 calls for unnecessary expansion of Federal bureaucracy and expenditures at a time when Americans and public officials are demanding less Government spending and control. In the long run, the mandatory bargaining legislation would be against the best interests of efficient producers of quality products, consumers and our national economy. The principal beneficiaries would be the bargaining associations, which would be the recipients of windfall returns from the checkoff fees.

The Chamber of Commerce of the United States urges rejection of H.R. 3535, the National Agricultural Bargaining Act of 1979.

I would like to add, Mr. Chairman, two things: One, on behalf of the hundreds of members of the Chamber of Commerce involved in investments and making investments in the agriculture business economy that are part of the food chain of this country, one of the least things they need at the present time is still another Federal bureauacracy that does interfere with business.

The second thing I would like to comment on is at the request of Congressman Findley, and that has to do with section 5(b), where he asked the question in your presence, and I promised him I would make a comment on this, even though I am not here as a representative of a grain company, and I would hasten to say that there are highly qualified witnesses from the grain industry that will follow me, but my comments would be quite short, and that is in response to his question that this provision as it is written in this proposed legislation is simplistic and naive as regards the grain and oilseed industry.

It is simplistic and naive because it does not recognize that one of the big functions of processing and merchandising is the management of risk, and the way this is presently written, it does not recognize the institutions that we have in this Nation that are set up for the purpose of hedging or risk management; it does not recognize their role of price discovery, and, finally, it does not recognize the manner in which those institutions are used to minimize the dollar loss or the dollar exposure in handling and processing billions of dollars worth of commodities in this country.

Mr. **Panetta**. Mr. Stokes, do you have any comments to make with regard to the legislation?

Mr. **Stokes**. No, thank you.

Mr. **Panetta**. Mr. Palmby, you have listened to some of the testimony being presented with regards to the concerns by some of the witnesses that under the Agricultural Fair Practices Act that they are finding that it is difficult to enforce and that, in fact, bargaining groups have not been recognized by processors in terms of negotiations.

Assuming that is true—we haven't established factually whether that is the case, although there has been testimony to that effect—but assuming that is true, how do we implement the Agricultural Fair Practices Act of 1967?

Mr. **Palmby**. I have two comments on that. On the assumption that is true, and I say to you that one answer to not handle it is to write additional legislation that then, too, would need to be tested in the courts and through the judicial system. The second would be if there are some inequities, injustices that have not been properly handled, then I would say this reflects a breakdown of the enforcement or the judicial system and again repeat would not be corrected by additional legislation that then would be faced with the same problem. That is what I meant by additional bureaucracy that would be saddled on the processor and handler and other people in the agriculture business community, and we are all part of the food chain.

Mr. **Panetta**. You are saying access to the courts would be sufficient to implement the enforcement?

Mr. **Palmby**. I do. I am not a lawyer or part of the judicial system, but I don't think legislation is the answer to that problem at all.

Mr. **Panetta**. Did the chamber in the past comment on the bargaining act, itself? Is that something that the chamber has taken a position on in the past?

Mr. **Stokes**. Yes, from the beginning.

Mr. **Panetta**. I assume it has always been in opposition to that approach?

Mr. **Stokes**. It has been opposed to the compulsory type bargaining features.

Mr. **Panetta**. Did the chamber support the Agricultural Practices Act of 1967?

Mr. **Stokes**. Yes, in the final analysis.

Mr. **Panetta**. I take it the chamber then supports the ability and the right of agricultural producers to join together voluntarily in bargaining associations?

Mr. **Stokes**. That is correct.

Mr. **Panetta**. The real question is how far beyond that you would take it in terms of enforcement mechanism.

Mr. **Stokes**. The chamber is opposed to further exemptions under the antitrust laws.

Mr. **Panetta**. I take it the chamber's position is to support the formation of cooperatives in the country?

Mr. **Stokes**. Yes, we recognize that right and support it.

Mr. PANETTA. Thank you very much, gentlemen, for testifying. Again, I apologize for the time delays.

The next witness is Mr. Edward Covell, past chairman of the National Broiler Council, accompanied by Mr. George Watts and Mr. James Rill.

Mr. Rill is counsel, and Mr. George Watts is president.

Welcome, gentlemen, to the Subcommittee on Domestic Marketing. I thank you for your patience in waiting for the opportunity to testify. You may proceed.

STATEMENT OF EDWARD A. COVELL, PRESIDENT, BAYSHORE FOODS, INC.; FORMER PRESIDENT, NATIONAL BROILER COUNCIL, ACCOMPANIED BY GEORGE WATTS, PRESIDENT, NATIONAL BROILER COUNCIL, AND JAMES RILL, COUNSEL

Mr. COVELL. Thank you, Mr. Chairman.

My name is Edward Covell, president of Bayshore Foods and also former chairman of the National Broiler Council on behalf of who I present the statement. The council is a trade association representing producer/processors of over 75 percent of the broilers marketed in the United States.

The council is opposed to enactment of H.R. 3535 and similar legislation for three very basic reasons:

First, the legislation constitutes a sharp departure from the basic economic principle that buyers and sellers in this country are free to do business or not to do business with one another without Government compulsion either way;

Second, the mandatory farm bargaining bills would create a new Federal regulatory body whose operations would be extremely costly for the public as well as the regulated processors and producers; and

Third, bargaining associations would be given a significant and probably decisive advantage under the legislation to the detriment not merely of processors but of producers who wish to remain independent.

What is particularly striking is that proposed legislation would have all these far-reaching and, in our opinion, serious adverse consequences, when there has been no showing of need for a mandatory farm bargaining bill. Our statement will discuss the major negative features of the legislation and then consider the absence of demonstrated justification for enactment.

An extremely important principle on which our economic system operates is that buyers and sellers of goods and contract services may select their suppliers and customers without Government interference. This principle has repeatedly been endorsed by the U.S. Supreme Court. It proceeds on the premise that the public interest is best served by a system that rewards efficient buyers and sellers and through the competitive process enhances the productivity of the overall market.

Mandatory farm bargaining legislation would depart from that principle by requiring handlers, such as broiler producer/processors, to negotiate in good faith with accredited bargaining associations over contract terms. No one should be misled that this provision merely imposes a superficial duty to hold inconclusive conversations.

If the standards of labor law, from which the notion of good faith bargaining is derived, are applied, the obligation is imposed on both sides to strive to reach an agreement, and failure to make this effort constitutes an unfair practice.

Thus, once an association has been accredited, it would have made considerable progress toward having obtained a contract. Once a contract has been entered into the bargaining association would, as the umbrella organization for its member growers, with Government sanction, have power to designate which of those growers would provide goods and services to which handlers.

We are not aware of any precedent for this departure from basic free market principles other than in the areas of labor relations and some aspects of public utility regulation. Labor law precedents are inapplicable since compulsory farm bargaining does not involve employer-employee relations but relations between business entities supplying capital and management skills. As to the analogy to public utility regulation, we believe that there is a national consensus favoring less, nor more, Government control over the economy.

The proposed legislation would require the Department of Agriculture to establish an agency with at least two principal functions: (1) to manage accreditation proceedings, and (2) to adjudicate unfair practice complaints. There would be no way of avoiding the creation of such an agency or reducing its regulatory responsibilities if the concept of mandatory bargaining is accepted.

The legislation contemplates the accreditation of one or more associations as the agent or agents for growers in dealing with specific designated handlers for specific agricultural products. As required by the Administrative Procedures Act and the due process clause of the Constitution, affected handlers would be given an opportunity to participate in accreditation proceedings, and so, presumably, would competing associations. These adversary proceedings would be expensive in terms of both time and money.

The burden on the agency and on the parties of accreditation proceedings, however, could be relatively insignificant when compared with unfair practice cases which would also be conducted by the Department of Agriculture. In particular, it can be fairly anticipated that refusal to bargain in good faith charges would require a substantial time and manpower commitment from the regulatory agency.

As is the case with accreditation proceedings, once the concept of mandatory bargaining is accepted the administrative agency must be empowered, subject to judicial review, to conduct proceedings which define the offense of refusal to bargain in good faith and other unfair practices. At issue would very probably be such questions as the duty to bargain over exclusive agency contracts, what constitutes a legitimate efficiency premium to a grower who may not be an association member, and whether it is an unfair practice for a handler under any circumstances to negotiate directly with a producer who is a member of an association. These very fundamental issues would be vigorously contested, and the Government could be a participant in every negotiating session and every business transaction between handlers and growers.

This result would occur even without the provision of the proposed bills authorizing the Secretary of Agriculture to impose compulsory arbitration on the parties. That provision only underscores the fact that this legislation represents an extreme departure from accepted economic principles.

The very substantial regulatory cost of the legislation seems apparent to us. What may not be so obvious but is nevertheless present is the preferential status which would be given bargaining associations in their relations with handlers and independent producers.

Accredited bargaining associations would be in a position to bring enormous pressure to bear on handlers to sign exclusive supply contracts. The entire legislative structure seems designed to encourage these agreements.

Associations become accredited upon a showing, in part, that they represent sufficient growers to act as an effective agent in dealing with the designated handler. The duty to bargain with the association contemplates dealing only with the association rather than directly with its members, thus establishing a framework for the allocation of particular growers to the handler involved.

The possibility that more than one association will be accredited to a handler provides a further impulse for each association to seek an exclusive contract to freeze out its rivals. This prospect of a legally sanctioned exclusion may be one reason why not all farm organizations support the legislation.

In addition, the refusal to negotiate in good faith for an exclusive contract could very well constitute an unlawful practice subjecting the handler to damages and injunctive sanctions. The basic thrust of the labor relations laws from which legislation draws its precedents is, of course, toward exclusive agency bargaining.

By the same token, there would be virtually irresistible pressure on growers to join bargaining associations even if they desire to remain independent. The independent grower is prevented from receiving any more favorable payments than an association member. Even if such payment represents an efficiency premium, the handler will be called upon to show that it is not an unlawful inducement to the grower to stay out of the association. The prospect that the handler will sign an exclusive contract with a bargaining association creates a substantial risk to the grower in remaining independent. It is also noteworthy that the legislation, unlike the Agricultural Fair Practices Act which it would repeal, does not prohibit bargaining associations from coercing, intimidating or otherwise engaging in unfair practices affecting a grower who desires not to join.

The net effect of the proposed legislation would be to increase costs of production and processing, reduce efficiency of operations, artificially increase prices and generate potential market dislocations. The administrative costs alone would be immense.

Even these costs would be overshadowed, however, by those which would result from the elimination of the right of growers and handlers to deal with one another individually and the elimination of competition among handlers and among growers based on payments which reward efficiency.

The legislation presents the danger that some handlers will be forced by the association to deal with less efficient growers, including those remote from the processors' place of business. The likelihood is that any geographic or product segment which is subjected to mandatory bargaining will, as a result of increased costs and impaired efficiency, lose markets to those segments which have not been affected.

These adverse consequences would result from enactment of the legislation notwithstanding the absence of any demonstrated need for mandatory farm bargaining. It must first be emphasized that the National Broiler Council is not opposed to the right of bargaining associations to operate.

If a bargaining association and a broiler producer/processor desire to deal with one another, that is entirely up to them. Current law, including particularly the Agricultural Fair Practices Act and the antitrust laws, offer ample protection against coercion, intimidation or boycotts which interfere with the right of growers to join bargaining associations and the ability of associations to operate. In a speech earlier this year, the Director of the American Farm Bureau Federation's Poultry Department asserted that his organization had, in fact, achieved some successes in discussion with broiler producer/processors, although bargaining relationships were not established.

He identified the following as the reasons why formalized bargaining efforts were ineffective in the broiler industry: First, too few growers were involved; second, lack of adequate financing; third, absence of a mandatory dues checkoff; fourth, lack of Farm Bureau leadership support; fifth, conflicts arising from the tactics of a bargaining association in 1970; and sixth, processor opposition.

These reasons for failure are, of course, ordinary economic circumstances evidencing primarily a general lack of interest in bargaining on the part of broiler growers as well as others. The fact is that unable to obtain adequate grower support for voluntary bargaining, the proponents of this legislation now seek to make bargaining mandatory by force of law.

Bargaining associations have not been successful in the broiler industry because there is vigorous competition among broiler producer/processors for efficient broiler growers as suppliers. Various studies which have been conducted confirm that there are effective competitive alternatives available to growers in each producing area. It is noteworthy also that under the contract system of broiler production and processing, the grower is largely insulated from the market fluctuations which are a characteristic of the broiler industry. There is simply no justification for imposing mandatory association bargaining on the broiler industry.

In the interest of time, our statement has not dealt in detail with various specific provisions of the legislation which we consider highly questionable. These include the checkoff provisions, the extreme sanctions under the bill which would be imposed by the Department as well as the courts, the prospect for further burdening already crowded court calendars, the excessive investigatory powers of the Department and the limited access of handlers to judicial review. We could discuss each of these aspects of the bill at some length.

It is, however, the basic thrust of the bill which we oppose. In the final analysis, there is no justification for establishing a mandatory farm bargaining structure.

I would like to say quickly that I am a processor. What concerns us most about this type of legislation is that if we have to bargain with a bargaining association for our growers—we have roughly 250 growers and produce a million chickens a week, or 50 million a year. Our contracts with our producers are efficiency contracts. They have a basic guarantee where they can't make—regardless of what the market is, they have a floor, and I would like to state here that we did not, as processors in the beginning of contracts, ask growers to go on contract; they came to us and asked whether they could go on contract or not, because this insulated them against loss. But with the efficiency contract and growers who do the best job naturally to make more money, under compulsory legislation we would have to feed people whom we did not necessarily want to feed because they are inefficient producers, and this would increase our cost, which we would have to pass on to the American housewife. We are in a highly competitive business.

Mr. PANETTA. I am sorry. Go over that again; why would you not be able to do the same things with the bargaining association?

Mr. COVELL. Because, as I understand this, if a bargaining association came to us and they represented a group of 20 or 50 or so growers and some of those growers were not efficient producers, in order to feed the 50 or whatever the number was we would have to feed those growers who were not necessarily efficient.

That would raise our costs of producing poultry.

Mr. PANETTA. Couldn't that be one of the terms in the negotiations with that group, that all of the people in their association have to be efficient?

Mr. COVELL. Well, sir, it would be one of the ones that we would fight for, but we may not necessarily get that.

Mr. PANETTA. Well, I guess that is just the process of negotiations. If you are going to sit down with a group and negotiate, then that is what it's all about. You have to decide what you want to agree to or negotiate on, and it seems to me that those kinds of provisions you could make the same argument against present law in terms of the ability of co-ops to come in and negotiate, that you prefer not to negotiate with a co-op in which there are inefficient growers.

That is a provision that could be brought into the negotiations so that you are not mandated to accept that kind of situation.

I would certainly oppose that kind of approach if you were mandated to accept inefficient growers, or you wouldn't be able to stake out those terms.

Mr. COVELL. I would hope you are right.

Mr. RILL. Mr. Chairman, if I may at this time point out, this raises the problems created by the interplay between the accreditation requirements of the bill, the provision of the bill which requires bargaining in good faith, which means bargaining with an intent to reach an agreement on all contract terms, and the prohibition in the bill against giving any more favored economic treatment to the growers, that is, growers outside of the association.

I think every time that a producer or processor broiler were to give an efficiency premium to an independent producer, he would have to give that same premium to the bargaining association regardless of the efficiency of its members or be prepared to prove in an administrative proceeding or in court each time that the efficiency was great, as between the independent grower and the bargaining association, which is merely an invitation to costly, protracted litigation because of the compulsory features of the bill.

Mr. **Panetta**. Well, I guess the concerns that have been raised in opposition to it, I understand the concerns, and yet I cannot help not feeling that some of it is overreaction because of the fact that I think when people sit down, people that want to sell their chickens or they want to sell their crops, they want to get a price. They do not have time to nitpick over little details.

The impression I get is that a constitutional case is going to be made every time you sit down and negotiate. I don't think that is the case. Farmers want to sell their products, whether they want to sell them individually or through a co-op, and they are not interested in going to court every time an issue comes up.

It's got to be resolved; they have got to sell their goods and get their money and move on.

I am concerned about their ability to at least get in the door and sit down and negotiate and, as I understand it at least from your testimony, you are not particularly opposed to that idea; right?

Mr. **Covell**. No, sir, in fact we supported it, what is it?

Mr. **Rill**. Agricultural Practices Act.

Mr. **Covell**. Yes; we supported that. We have no hangup on that at all. It's the compulsory part of it that we are concerned about.

Mr. **Panetta**. Do you deal with any kind of bargaining association at all?

Mr. **Covell**. In our company we have a grower committee and we have 10 different areas within our trade area. In each of those areas we have a service manager who works with the particular producers.

We have one grower in each one of those areas who sits within our company. We call it the broiler council within the company, and those people are supposed to be the ears that we use for our growers, and we meet with them quarterly to see if they have any problem.

We listen to them very attentively and react. If they think the contract is not OK, we sit down and discuss it.

Sometimes we raise the contract and sometimes we don't. We discuss their economic situation and what ours is, whether we can afford it or whether we can't.

Many times they come up with suggestions. The recent one was we would like to have your name on our gate, because we want people to know that we feed with you, so we are having signs made to put on their gate.

On the Eastern Shore, they thought it would be good for our name to be public. We have a big sign up now over in Queenstown, Md. on Route 50 that says, "You Are Now in Shore Good Company." That is our trade name. This was their suggestion. We do meet with them.

Other companies have similar groups. They don't bargain, but they do discuss their problems.

Mr. **Panetta**. Yes, but obviously the people that you are dealing with have not felt the need to put together a bargaining association; isn't that correct?

Mr. Covell. Not at this time, sir.

Mr. Panetta. Yes, and I am not sure that even if this legislation were enacted that there would be that much incentive, because if you cannot get the individual producers that want to do it, you have not got a bargaining association.

Mr. Rill. May I add at this point, of course, under the Agricultural Practices Act the producers are protected from the harassment and coercion. If they want to form a bargaining association they can do it now.

Mr. Panetta. That's right.

Mr. Rill. If they have enough interest to get behind the bargaining association, the bargaining association will operate. The adverse consequences of this bill grow from the compulsory nature that would require bargaining with an accredited association.

If you look again at the testimony, the experience by Dr. Jasper indicates why bargaining hasn't worked in the broiler industry is because there isn't sufficient interest and sufficient concern on the part of growers because they are working satisfactorily with the producer/processors.

I would be confident, though, that if this bill passed, there would be a bunch of bargaining associations running down to the Department of Agriculture asking to be accredited for Mr. Covell to be the bargaining agent for a handful of growers, and I am also sure as we are sitting here that would happen.

Mr. Panetta. What you are saying is that it is the mandatory aspects of backing them up that might suddenly create these bargaining associations that might then have some leverage?

Mr. Rill. It gives them a terrific lever, Mr. Chairman.

Mr. Panetta. Thank you very much for your testimony. We appreciate your coming before the subcommittee.

Our next witness is Mr. Michael Brown, vice president of the American Frozen Food Institute, Washington, D.C., accompanied by Mr. James Brian, president, Smeltzer Orchard Co., Frankfort, Mich.

STATEMENT OF MICHAEL BROWN, VICE PRESIDENT, AMERICAN FROZEN FOOD INSTITUTE, WASHINGTON, D.C., ACCOMPANIED BY JAMES H. BRIAN, PRESIDENT, SMELTZER ORCHARD CO., FRANKFORT, MICH., AND KATHLEEN McDERMOTT, COUNSEL

Mr. Brown. We do have a slight time constraint so we will try to keep this extremely brief.

I am accompanied by Mr. Brian and Kathleen McDermott, who is counsel to our association.

My name is Michael F. Brown, and I am vice president of Government and Trade Relations for the American Frozen Food Institute.

I am speaking today on behalf of the AFFI, the National Trade Association of the Packers of Frozen Food.

This afternoon I would like to briefly summarize our prepared statement and, hopefully, you will submit the full statement to be submitted for the record.

[The prepared statement of Mr. Brown appears on p. 204.]

Mr. **Brown**. I would like to use the remaining time allotted to us for one of our members to describe to you his experience under State legislation similar to the bill under consideration today.

AFFI is opposed to mandatory farm bargaining legislation in general and to this bill in particular, in essence because without any record of abuse in the procurement process or any showing of necessity for this legislation, this bill first could coerce producers into joining associations and force buyers to deal with those associations eliminating the essential freedom of buyers and sellers to select those persons with whom they will do business.

Second, it would provide associations with an unwarranted, inequitable advantage in the bargaining process and with the power to impose anticompetitive terms on buyers.

Third, it would compel the creation of a mammoth regulatory body whose operations would necessarily be complex, time consuming, and expensive for all parties.

Our opposition is based on the coercive nature of the proposal. AFFI does not object to the concept of voluntary bargaining and in fact some frozen food processors today bargain annually with bargaining associations.

AFFI believes that the weakness of this proposed legislation would be immediately felt, once it was put into operation, and I have with me today an individual who can speak from firsthand experience of the practical results of such legislation, Mr. Brian, who is president of Smeltzer Orchard Co. of Frankfort, Mich.

Mr. Brian has been with that company for 33 years and has been its president for the past 21 years and served on the board of directors of the Michigan Canners & Freezers Association as well as the board of directors of the American Frozen Food Institute and past chairman of the board of the American Frozen Food Institute.

In addition, he was selected as one of the five original members of the Michigan Agricultural Marketing and Bargaining Board which oversees the operation of Michigan's Public Act 344, the Agricultural Marketing and Bargaining Act.

I would like to now call on Mr. Brian to share his views and experience with agricultural bargaining in his State.

Mr. **Brian**. Thank you, and I want to express my appreciation for appearing before the committee and taking this opportunity to disagree with the information given yesterday by the Michigan Agricultural Cooperative Marketing Association representative.

The Michigan Mandatory Bargaining Act was stated in that testimony that it is working well.

As Mike previously explained my involvement, when the first board was appointed by our Governor of Michigan, I was included to represent the processing industry.

Our people are also growers; I fortunately drew a 1-year term and was on the board 14 months, and we spent 42 working days attempting to implement this act.

Since the implementation of the act, it has been in continual litigation as previously mentioned. There have been eight litigations.

The circuit court brief that I have with me was placed in the Michigan Ingham County Circuit Court, a 190-page brief, and that has not been acted upon.

It was placed in the court 2 years ago, and we still do not have any report on the case.

We have resulted in mass confusion, bad bargaining practices in behalf of the committee that is doing the bargaining, and the processors in our State have moved out of State for considerable production.

Many hundreds of thousands of bushels of apples, for example, have been brought in from other States and processed because the price was lower than the one negotiated for.

Our own company had been processing somewhere between 15 and 18 percent of the Nation's frozen sliced apples, according to the national statistics, and we are reduced now down to about 5 percent.

As an example, the first negotiations on apples was 12 cents a pound in Michigan, while at the same time it was 5 cents in California. Our perspective accounts were canceled and California apples were shipped into Michigan users.

We feel that this would happen if this law became a national situation with imports.

. We have considerable production being shipped into our Nation now, and from other countries, and this would expedite that very considerably.

On the other hand, I would like to bring out that the personnel involved in the marketing and bargaining decisions are fine, young men, but they are not qualified to make decisions on multimillion dollar crops.

The variables of weather, supply and demand, world market strikes, the economy, various other factors change from day to day, and there is not any bureaucracy that can move as rapidly as needed to keep pace with marketing.

As another example, last year red tart cherries; Michigan produces 60 to 70 percent of the Nation's red tart cherries. If that had been under the bargaining unit, the Michigan Agricultural Cooperative Association recommended a price but that would have lost the growers $15 million had everyone agreed to their price.

On the free enterprise system, we were able to market the red tart cherry crop at a better than $15 million gross profit above what the marketing group would have had as a price.

We have eight litigations that are either pending or in court at the present time, and some of these include growers.

We have a case with the Belding Fruit Sales that involves 30 applegrowers that have brought suit against the Agricultural Marketing Bargaining Board and that case, as far as I know, has not been concluded to date.

We have had the cases in the Circuit Court of Michigan, in the Michigan Court of Appeals, and in the Supreme Court, and the basic case at the present time has reverted back to the circuit court, and I refer to it as the brief that I presented, the 190-page brief.

Mr. **Panetta**. That is a processor action?

Mr. Brian. It is a processor action, and members of the Michigan Frozen Food Association have paid in excess of $125,000 in legal fees.

Mr. Panetta. Does that contest the law itself?

Mr. Brian. Yes.

Mr. Panetta. The constitutionality of the law?

Mr. Brian. Yes, plus several other areas. In other words, with 32 years experience in the processing business, marketing bargaining being conducted by a bureaucracy has created confusion in the processing industry, and we feel only muddies the water to an orderly marketing and bargaining, and if this thing were brought on federally, that this only lays another unneeded layer of bureaucracy between growers and processors.

Mr. Panetta. Thank you very much.

I again have another vote to go to. I know you have to catch a plane. I don't know whether Mr. Brown and Ms. McDermott can stick around, but I will be back in 10 minutes.

[Brief recess taken.]

Mr. Panetta. The Subcommittee on Domestic Marketing again resumes its hearing on H.R. 3535.

Thank you for sticking around. We appreciate that. We are almost at the end here.

I take it again the basic concern with regards to the Frozen Food Institute is not the question of whether farmers ought to have the right to come together to form cooperative bargaining associations, but the mandatory aspects of this legislation.

Mr. Brown. That is correct, Mr. Chairman.

Mr. Panetta. You are supportive generally of the Fair Practices Act in terms of the ability of the cooperatives to go together and to avoid coercion, is that correct?

Mr. Brown. Absolutely; as I indicated, there are several of our members who are voluntarily dealing with such associations now.

Mr. Panetta. There are other States that have enacted legislation similar to Michigan. Are actions also being brought in those States to challenge those laws?

Mr. Brown. Not that I am aware of at the moment.

To the best of my knowledge, the Michigan statute is quite different from any of the other four States, I believe, that have passed similar laws, in that it has a far more mandatory nature to it.

The others are, I believe, voluntary, and along the lines of the California act.

Mr. Panetta. Who implements the Michigan law? Is that the Department of Agriculture or the Attorney General?

Ms. McDermott. I believe it's the board that Mr. Brian was a member of appointed by the Governor.

Mr. Panetta. It has accreditation and engages in arbitration in the same way, is that right?

Does the Frozen Food Institute in fact have any contracts with cooperative organizations?

Mr. Brown. Any contracts?

Ms. McDermott. You say the Frozen Food Institute?

Mr. Panetta. Do your members?

Mr. Brown. Yes; and we also have cooperative members in the organization.

Mr. Panetta. In the organization itself?

Mr. Brown. Yes.

Mr. Panetta. Let me ask you, frankly, what do you do with a situation where a cooperative is formed and the processor just refuses to deal with that cooperative, mainly because he may feel he does not want to deal with the cooperative or that is going to be trouble.

He would rather deal with independents. How do you deal with that situation? Is it your feeling that you resort to the courts under the Fair Practices Act or is it your feeling that that situation has to be dealt with legislatively?

How do you deal with that kind of problem, first of all, assuming that you agree it's a problem?

Mr. Brown. I am not aware of that circumstance having occurred, but it is my understanding—and I will stress that I am not an attorney—that there are sufficient remedies under existing law for the organization to seek some remedy; is that correct?

Ms. McDermott. Yes; if the refusal to deal amounts to discrimination against a company or companies because they belong to the cooperative, which may or may not be the reason for the refusal to deal with any given cooperative, then there are remedies under existing law.

But a refusal to deal with any particular cooperative can be the result of the same reasons for refusing to deal with any particular grower, past experience, shoddy performance, inefficiency, any reason.

I think that points out the problem with the mandatory aspect of the bill under consideration, which is that all of these reasons may exist for failure to reach an agreement with an accredited association, but so long as the processor knows that as soon as the association files a charge of failure to bargain in good faith, the Secretary of Agriculture will issue a complaint and will hold an adjudicatory hearing, that processor's freedom to fail to reach an agreement is really largely eliminated.

Mr. Panetta. Yes; because I think the problem in all of this is trying to find that balance. Obviously, you don't get the Farm Bureau and the Farmers' Union and the Farmers' Cooperative and other groups to get together unless they feel there is an imbalance in the negotiating situations.

It is not to say it happens everywhere, but there are instances of imbalances, and their concern is how to try to correct that. I sympathize with the problem of overreacting in creating a monster that in turn will become the burden for everybody.

On the other hand, how do you take the law as it stands now and try to build in protections that, I guess in the end, you can use the argument that, well, the courts are always available but the fact is the courts are not always a very efficient mechanism, particularly when the farmer has got his crop coming in and you have to sell it.

You can't just simply keep going back into court. That is the situation, I think, that the committee is confronted with and the Congress also.

I am not wedded to all of the terms of H.R. 3535, but it seems to me that something has to be done to at least improve the present law that is inplace, because otherwise all you wind up doing is reaching a situation in which processors may very well say, I don't want to deal with any cooperatives because it's much better for me to be able to have a system in which I can bargain with different groups and a cooperative means trouble for me, particularly if they do block out all of the production in an area, so that they are the only ones I can deal with, so I cannot understand where processors might hesitate to want to deal with them.

On the other hand, how do you get them at the same table to at least negotiate that out and do it on a fair basis?

Anyway, that is a problem we have to face.

I appreciate your testimony and the evidence you have presented and thank you for being very patient today.

Mr. **Brown**. Thank you, Mr. Chairman.

[The prepared statement of Mr. Brown follows:]

STATEMENT OF MICHAEL F. BROWN, AMERICAN FROZEN FOOD INSTITUTE

My name is Michael F. Brown. I am vice president, government and trade relations for the American Frozen Food Institute ("AFFI"). I am speaking today on behalf of AFFI, the National Trade Association of the packers of frozen foods. Our association's members account for approximately 85 percent of the country's total production of frozen fruits and vegetables, and a substantial portion of the production of other frozen foods.

AFFI appreciates this opportunity to appear before you and explain our opposition to mandatory farm bargaining legislation, such as H.R. 3535. I prefer today to express our opposition to this legislation in its entirety, rather than to dwell at length on shortcomings of any particular provision. We are opposed to this legislation, in essence, because without any record of abuse in the procurement process or any other showing of necessity for this legislation, the bill (1) by coercing producers into associations and by forcing buyers to deal with those associations, would eliminate the essential freedom of buyers and sellers to select those persons with whom they will do business; (2) would provide associations of producers with an unwarranted, inequitable advantage in the bargaining process and the ability to impose anticompetitive terms on buyers; and (3) would compel the creation of a mammoth regulatory body, whose operations would necessarily be complex, cumbersome, time consuming and expensive.

AFFI wishes to make one point clear at the outset: our opposition to this type of legislation is based on its coercive aspect, which would impinge on the freedom of producers and processors alike. We do not oppose the formation of bargaining associations or the concept of bargaining. Current law authorizes bargaining associations and, moreover, protects those who would associate in them from coercion, intimidation or boycotts which interfere with them. Some frozen food packers bargain annually with such associations. Voluntary associations and voluntary bargaining do not give rise to the problems that a mandatory system would pose. However, even voluntary bargaining associations have not experienced significant success in the frozen food industry. The simple reason is that the present system operating in our industry, that of contract buying for agricultural products by processors, is characterized by strong competition among processor packers for the output of producers, making it unnecessary for the producers to associate to sell their product on terms advantageous to themselves. To provide the subcommittee an understanding of the magnitude of commodity packing in this country, we are attaching as an appendix to this testimony the 1978 AFFI frozen food pack statistics book, which shows calendar year production of individual commodities by region and container size. In addition, the number of packers of each commodity item is listed in the contents page.

So that you might appreciate the disruptive, anticompetitive impact this legislation would have on the system of contract buying of agricultural products by frozen food processors, I will briefly describe how the system operates.

1. Despite the cyclic nature of agricultural marketing activity, grower-handler contracts and discussions are part of a year-round system. The activity leading up to a contract and thereafter to harvesting and processing often includes evaluation of

the crop history of each field in terms of the crops which have been grown on it and the quality, yields, fertilization program, weed control practices, irrigation facilities and soil analysis; methods of spreading the harvest and processing season in manageable proportions must be considered; the grower's ability to handle the crop with available equipment, the labor that he can muster, and the equipment and supplies to be furnished by the handler and many other factors, are a necessary part of preparation.

2. These activities cannot be postponed until planting time but, in many instances, must be undertaken and pursued diligently for months in advance, so that a contract, if one is agreed upon, may be concluded well ahead of the leadtime required for soil preparation.

3. During the negotiations the handler may be discussing a contract with other growers and the grower may look to other handlers and may consider alternate crops, in the event that no agreement is reached.

4. When the contract is signed, it contains provisions for specific parcels of the growers land, a stated number of acres or pounds, and the defined seed varieties to be used. It may prescribe a planting schedule to ensure an orderly harvest with expected maturity dates staggered to accommodate both the grower's and the processor's capacities to handle the product.

5. Once planting starts the processor's fieldmen will be observing, advising, and estimating maturity dates of the grower's crop. They will counsel and assist in the treatment of pest, weed, disease, irrigation, and fertilization problems.

6. When the crop is harvested all available information related to crop technology, including chemicals used, their frequency and rate of application, labor and equipment performance, grades and yields achieved and revenues realized, is gathered and organized for computer analysis. Comparisons are made of results obtained by other growers and in other years. Recommendations for future improvement and corrective action are recorded. These may result either in a decision by the handler and grower to again negotiate next year or to part company.

We believe it should be apparent, from this outline of the many-faceted bargaining process, with its dependence upon personal contact between the grower's and processor's representative, that the scheme proposed in H.R. 3535 would uproot the present system to the great detriment of both grower and handler.

In place of the present flexible system H.R. 3535 would impose an inflexible coercive one. A processor would no longer be free to negotiate with the individual producer who, in the processor's opinion, would be the most suitable source of supply. The processor would be compelled to bargain instead with any and all accredited bargaining associations which designated him as handler. The processor would be under significant pressure, moreover, to reach agreement, and quickly, with one accredited association for several reasons. First, to draw out the bargaining process would be to risk being left without a source of supply. Second, to fail to reach an agreement could subject the processor to either charges of failure to bargain in good faith, or compulsory arbitration, either of which prospect significantly undermines any comfort the processor might take in the Bill's provision that neither party must agree to a proposal. Third, to fail to agree to an exclusive contract, as any large association might well demand, could lead to the same charges. Fourth, to deal with individual producers outside of an association could subject the processor to allegations of engaging in the unfair practice of offering an inducement to a producer for refusing to join an association. In sum, under the proposed system, the processor could no longer seek the best possible product, from the most efficient or top quality producer, for the best, mutually acceptable price. Instead of choosing his supply, he would have to deal with the "supply" that chooses him, and relinquish to the association the power to designate which crops go to which processors.

Individual producers would be similarly coerced into the mandatory bargaining system. First, the individual producer would no longer be free to seek an efficiency premium or quality differential for his product: The bill prohibits the offering of better terms to anyone than those negotiated with an accredited association, thus preventing the non-member producer from reaping the rewards of superior production. Such a producer's only hope of getting his fair return would lie in joining the bargaining association and trying to raise the general level of prices for the product of all the members. A second source of coercion on the producers derives from the pressure that can be brought on the handler to sign exclusive contracts with associations. The threat of being squeezed out of the market by exclusive contracts provides not very subtle pressure on all producers to join an association. Third, the legislative scheme may leave non-joining producers subject to even more direct pressures: Contrary to its treatment of handler unfair practices, the bill contains no provisions prohibiting associations from coercing producers to join, or from inducing handlers to breach contracts with non-member producers: moreover, the bill would repeal the existing law—the agricultural fair practices act of 1967—which does protect individual producers from such coercion.

It should be apparent by now that the necessary effect of the mandatory bargaining system would be artifically to raise prices—that is, raise prices for reasons unrelated to productivity—by providing the accredited associations with monopolistic power over their designated products. As described above, the association's power to delay or prevent a processor from obtaining essential products—through negotiation, mediation, administrative complaints and civil suits—translates into the power to dictate the association's terms to the producer, and such power in turn ensures the association of the ability to compel all competing producers to join. Price enhancement would be the inevitable result.

In addition, the proposed mandatory bargaining system would not merely permit the bargaining associations to manipulate prices, but would by its very structure enormously increase the costs of production and processing, and therefore the cost of product to the consumer. These costs would flow from the extensive regulatory structure needed to administer the law. The Department of Agriculture would have to establish an agency with at least three principal functions: (1) To manage accreditation proceedings; (2) To conduct mediation and arbitration proceedings; (3) To investigate and adjudicate unfair practice complaints. Further, the agency staff would be involved in bringing and defending civil actions under section 12 of the bill.

The management of each of the three principal functions will inevitably devolve into complex proceedings. For example, the processing of accreditation applications will require the promulgation of detailed implementing regulations providing, among other things, the standards to be met for accreditation, proof required, and the nature of both the formal and informal proceedings contemplated by the law. Potentially affected handlers would have the opportunity to participate in the proceedings, and would be unwise not to participate, given the disadvantage of being "designated" by bargaining associations. Presumably, under the Adminstrative Procedures Act and the due process clause of the Constitution, competing accredited associations could also participate in the proceedings. The proceedings would almost certainly become adversarial rather than inquisitorial in nature, with all the costs attendant upon adversary proceedings.

The mediation and arbitration services proposed are sketched only in bare form in the legislation. Their implementation would undoubtedly also result in extensive, formalized proceedings, with participation insisted upon by all potentially affected parties.

Where the greatest impact of this legislation will be felt—in terms of time and manpower commitment from USDA and cost to all parties—will be in the adjudication of unfair practice complaints. In particular, any dissatisfaction by the parties, any breakdown in the bargaining process, any attempt by processors to do business with independent producers, are certain to lead to charges of refusal to bargain in good faith. Whenever such a charge is made—baseless or otherwise—the Secretary of Agriculture must, without a preliminary investigation, issue an administrative complaint and hold an evidentiary, adversarial hearing. All other charges require an investigation by the Secretary, followed where appropriate by complaint and evidentiary hearing. The adjudicatory process will be slow and complex. The agency will be required in these proceedings to define the offenses of refusal to bargain in good faith, inducement to refuse to join an association, and the other enumerated unfair practices. These offenses are couched in broad and flexible terms, and their refinement through lengthy adjudication would be required before any certainty under the law could be provided. At issue, for example, would be such questions as whether there is a right—and a duty to bargain over—exclusive agency contracts, whether a determination that certain terms are more favorable than others may take cognizance of quality differences in product, and whether it is an unfair practice, without more, for a processor to negotiate directly with a member of an association. These and countless other issues would be in dispute and would be contested vigorously; their adjudication would not only be costly but would as a practical consequence engage the agency in every phase of the negotiating process and in virtually every business transaction between handlers and growers. If ever a proposal were the antithesis of regulatory form, this legislation would be.

AFFI is convinced that the first geographic area or product market that is subject to this regulatory experiment will provide ample proof of its folly, in the form of markets lost to unaffected areas. Increased cost of production and processing, reduced efficiency and artificially increased prices caused by the legislation will combine to cause substantial market dislocation. These results, when added to the elimination of producers' and processors' freedom to deal, compel the conclusion that the experiment is not worth the risk.

Mr. PANETTA. Our next witness is Mr. William Brooks of the National Grain Trade Council, Washington, D.C.

STATEMENT OF WILLIAM F. BROOKS, PRESIDENT, NATIONAL GRAIN TRADE COUNCIL, WASHINGTON, D.C.

Mr. BROOKS. Thank you, Mr. Chairman.

Mr. PANETTA. Thank you for waiting, and I apologize for the delays during the day.

Mr. BROOKS. I don't envy your position having to sit through 2 days of this, particularly under the circumstances, and I admire you for the way you are doing it.

I am William F. Brooks, president and general counsel of the National Grain Trade Council.

I do have a prepared statement which I would like to have in the record in full.

[The statement appears on p. 208.]

Mr. BROOKS. We recommend that the subcommittee not approve H.R. 3535.

Food grains, feed grains, and oilseeds are the commodities with which the grain marketing industry is involved.

These are nationally produced, storable, nonperishable commodities.

They are actively traded at cash grain markets every day throughout the United States with many of them actively traded as regulated commodities at the designated and regulated futures markets at Minneapolis, Chicago, and Kansas City.

These are impersonal markets, and they do not discriminate between users.

The export market for many of these commodities is substantial. The prices and values of these commodities cannot realistically be established by U.S. producers and handlers alone.

Possibilities may exist to improve farm income through producer bargaining arrangements, for producers of perishable specialty commodities produced in a compact geographic area, but the producers of nationally produced food grains, feed grains and oilseeds marketed through this Nation's grain marketing system offering as it does to the producer of these crops, broad and effective bargaining capacity, do not now need and will not in the foreseeable future need new and additional sponsored encouraged or supervised collective bargaining techniques to improve their income.

The producers of these crops have, in our judgment, been given substantial bargaining authority for price improvement as programs covering them have been developed and administered under the 1977 Food and Agriculture Act.

This subcommittee should, in considering H.R. 3535 or similar bills, develop substantial evidence, in effect, and information on the probable costs of the programs to the Government and to persons who would be affected as handlers, and I might add consumers, on the number of persons who as potential handlers would be required to operate within the programs on the relationship of the programs, to the 1977 Food and Agricultural Act as that act applies to the producers of food grains, feed grains, and oilseeds.

So far, we believe that the 1977 act has worked well, and in this respect we share Secretary Bergland's views on that act.

These he expressed on June 25, 1979, in a convention on the structure of agriculture, and I have set out some of the comments in my prepared statement.

If H.R. 3535 were to be enacted, U.S. producers of food grains, feed grains, and oilseeds would not obtain the highest possible prices in markets, domestic and international, and would lose flexibility to respond to market signals and to run their business as they see fit.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Brooks follows:]

PREPARED STATEMENT OF WILLIAM F. BROOKS, PRESIDENT, NATIONAL GRAIN TRADE COUNCIL

The National Grain Trade Council, a voluntary, unincorporated organization whose policy making members are Grain Exchanges or Boards of Trade and National Grain Marketing Organizations, appreciates this opportunity to submit to the Sub-committee our views in opposition to the pending bill that would establish, if enacted, government sponsored, encouraged, and supervised collective farmer bargaining groups who, when "accredited", would "bargain" with a "handler" or handlers for "fair prices" and with respect to the "production, sale, and marketing of agricultural products".

The Council recommends that the Sub-committee not approve H.R. 3535.

Under H.R. 3535, persons participating in the Nation's low cost efficient grain marketing system, other than "associations", would as handlers, in one way or another, of wheat or corn or grain sorghum or barley or oats or rye, or soybeans or sunflower or flaxseed or a combination of some or all these commodities, be subject to compulsory bargaining "for fair prices and terms of sale of their product "as well as to bargain" with respect to the production, sale, and marketing of agricultural products"; to mediation and arbitration procedures at the discretion of the Secretary; to compliance with affirmative action programs as determined by the Secretary; to recordkeeping requirements as the Secretary may require; to administrative procedures and to proceedings in Federal District Courts initiated by the Secretary.

Food grains, feed grains, and oilseeds are the commodities with which the grain marketing industry is involved.

These are nationally produced, storable, non-perishable commodities.

These commodities are actively traded at cash grain markets every day throughout the United States.

Many of them are actively traded as regulated commodities at the designated and regulated futures markets at Minneapolis, Chicago and Kansas City.

The export market for many of these commodities is substantial.

For these commodities, cash and futures values exist. They represent and reflect national and world supply and national and world demand.

The prices and values of these commodities cannot realistically be established by U.S. producers and handlers alone.

It is conceivable that possibilities do exist to improve farm income, through producer bargaining arrangements, for producers of perishable specialty commodities produced in a compact geographical area. Producers of those commodities should have the right to participate in bargaining associations without losing the right to do business as an individual with any handler or processor of his own choice. But the producers of nationally produced food grains, feed grains, and oilseeds marketed through this Nation's grain marketing system offering as it does to the producer of these crops broad and effective bargaining capacities, do not now need and will not in the foreseeable future need new and additional government-sponsored, encouraged or supervised collective bargaining techniques to improve their income.

The producers of these crops have, in our judgment, been given substantial bargaining authority for price improvement as programs covering them have been developed and administered under the 1977 Food and Agriculture Act.

This Sub-committee should, in considering H.R. 3535 or similar Bills, develop substantial evidence and information on the probable cost of the programs to the Government and to persons who will be affected as handlers; on the number of persons who as potential handlers will be required to operate within the programs;

on the relationship of the programs to the 1977 Food and Agriculture Act as that Act applies to the producers of food grains, feed grains, and oilseeds.

We have no way of guessing what it will cost to carry out the provisions of H.R. 3535. A reading of Section 9(d) suggests that a substantial and very expensive program is contemplated.

A U.S.D.A. task force in June this year estimated that there are 15,000 grain elevators in the United States.

Each of those 15,000 establishments would be a potential "handler" under the proposal. And to that number of grain elevators would be added brokers or agents or commission merchants and others.

All farmers and ranchers are covered by H.R. 3535 with no distinction as to the crops they produce and with no consideration as to the treatment of producers whose crops are eligible for price supports, for target prices, and for the producer controlled reserves.

So far, we believe that the 1977 Food and Agriculture Act has worked well. And in this respect we share Secretary Bergland's views on the 1977 Act.

These he expressed on June 25, 1979, in a conversation on the structure of agriculture.

During this conversation, the Secretary, inter-alia said:

"The 1977 Act has been a success, judged by any reasonable standard. Farm income is up and the outlook is bright. Producers have more freedom to run their businesses as they see fit. We have a grain reserve program. Our foreign customers can count on reliable supplies. Agriculture is well on the way to recovering from the shocks of the early 1970's.

"There are still some adjustments needed. If there weren't, we wouldn't have found the Capital Mall full of tractors and unhappy farmers last winter. The Farm Bill has worked well. But we can't discount continuing problems, and we can't ignore signs that portend further problems.

"The basic ideas behind the last Farm Act go back a long way. The 1977 Act was just the latest step in a process that has been going on for years. Right after World War II, some of the best minds in agriculture said we ought to have programs that combined direct payments, loans, and reserves. They wanted a policy that would encourage abundant food supplies and a tough, efficient, market-responsive farm sector. That's exactly the kind of policy we have in the 1977 Farm Act."

"*Question*. The tendency, most notable in the farm bills of recent years, has been to lessen the direct role of government in agriculture; are you now advocating a reversal of this—a larger role for government?

"Secretary BERGLAND. No, I am not. The 1977 Food and Agriculture Act offered farmers more independence and greater flexibility in responding to market signals. I think that was a fundamentally sound direction for agriculture, and I still support it.

"But having said that, I must also add that it is simply not possible, or realistic, for government to get out of agriculture, as some have suggested. The government has a responsibility both to consumers and to farmers to provide a policy framework which will help maintain an abundant and stable food supply.

"The government will continue to play a role in agriculture, but I want to make sure that there are no unintended, and unwanted, side effects in terms of who can farm, how they farm, and where they farm."

If H.R. 3535 were to be enacted, United States producers of food grains, feed grains, and oilseeds would not obtain the highest possible prices in markets, domestic and international, and would lose flexibility to respond to market signals and to run their businesses as they see fit.

The National Grain Trade Council recommends that the Sub-committee not act favorably on H.R. 3535.

Mr. PANETTA. Thank you, Mr. Brooks.

Before going into questions, I have got Mr. Keating here with the National Grain and Feed Association.

Mr. Keating, why don't you go ahead and proceed with your statement.

STATEMENT OF W. J. KEATING, COUNSEL FOR PUBLIC AFFAIRS, NATIONAL GRAIN AND FEED ASSOCIATION, WASHINGTON, D.C.

Mr. KEATING. Thank you, Mr. Chairman.

I am William J. Keating, counsel for public affairs, National Grain and Feed Association, appearing in opposition to H.R. 3535.

The National Grain and Feed Association has 1,300 members ranging in size from the smallest country elevator to the largest grain and feed complex.

The members are warehousemen, merchandisers, processors, and exporters of a wide spectrum of grain and grain products. In addition we have 46 State or regional grain and feed associations affiliated with the national representing upwards of 10,000 member firms.

Our opposition to H.R. 3535 is based on the following reasons:

One, there is no need.

Two, it will disrupt normal competitive markets.

Three, it could reduce exports and impact unfavorably on our balance of trade.

Four, it could raise prices of food for consumers.

Five, it will create a giant bureaucracy.

Six, it will require extensive litigation and court decisions to define bargaining in good faith.

Let me explain.

One, no need: Producers of agricultural commodities have authority to voluntarily join bargaining or marketing associations with their immunity from the Federal antitrust laws granted by the Capper-Volstead Act.

In addition, the Agricultural Fair Practices Act protects the producers from discriminatory and coercive acts by handlers. Thus, if producers wish to join bargaining associations, and many have done so, they have the authority to do so and no further legislation is necessary.

Two, disruption of normal markets: H.R. 3535 would set up an elaborate organization to certify bargaining associations and require bargaining in good faith on the part of handlers, with the Secretary of Agriculture as referee and arbitrator.

If the association can provide the handler with his full supply, other producers are precluded from marketing their commodities. If, on the other hand, the bargaining association has control of the entire crop, certain handlers can be precluded from the market.

When the price has been established by compulsory bargaining a handler can be shut out of a market when prices rise, because to pay another producer or bargaining association an enhanced price will require the handlers to pay the increased price to the first bargaining association.

Prices will be established through bargaining rather than in the competitive marketplace. Worldwide supply and demand factors will be meaningless and the futures markets, which have been so effective in price discovery, will become useless.

As to the grain industry, a country elevator favored by the bargaining association can freeze out other country elevators in the vicinity. Thus competition in the marketplace is removed by the full supply concept.

Exports and balance of trade: The proponents of compulsory farm bargaining expect the legislation to enhance prices. If they are successful and are able to establish contract terms which price the commodity above the world market price, our exports are bound to decrease as buyers of our exports find other sources of supply at reasonable market prices. Any diminution of our agricultural exports will adversely affect our balance of payments in world trade.

Increased consumer prices: Likewise, if the price which the producers receive is arbitrarily enhanced through the efforts of the bargaining association, someone must pay more and, ultimately, it will be the consumer.

Giant bureaucracy: It is difficult to envision the full impact on Government if H.R. 3535 were to be enacted.

Several questions need to be answered: Would there be a bargaining association for each commodity, for all commodities in a State or region, for a commodity in some States and not others?

The variations are innumerable and in case the Secretary of Agriculture, after establishing regulations, would have to certify each such bargaining association. The handlers designated in the petition for accreditation must receive personal notification from the Secretary or by publication in the Federal Register.

Then the association and handlers have an opportunity to submit written evidence, views and arguments to the Secretary, who may conduct an informal proceeding or a formal hearing. This is just to start up the mechanism for compulsory bargaining.

After that comes the Secretary's involvement in mediation and arbitration. All of this work by the Secretary will require an enormous support staff to keep compulsory bargaining functioning.

Extensive litigation: "Bargaining in good faith" is a simple phrase but judging from the extensive litigation and court decisions under the National Labor Relations Act in defining the term and circumstances in which it applies, it is not so simple.

We cannot expect that the courts will be called on to define the term as used in H.R. 3535 and with the many varied situations vis-a-vis handlers and bargaining associations the litigation will be extensive, time-consuming and expensive.

Mr. Chairman, in 1971 there were 13 days of compulsory farm bargaining on which we testified. Our statement in hearings serial No. 92-M at page 238 et seq. deals extensively with market impact and I would recommend that it be considered by your subcommittee.

Furthermore, the Harvard Law Journal on Legislation, volume 9, No. 3 of March 1972 contains an article by Dale H. Oliver and Stephen J. Snyder on compulsory farm bargaining and the National Labor Relations Act.

I have a copy which I will leave for the subcommittee, and at your pleasure, you may wish to insert it into the record for study by the members of the subcommittee.

In conclusion, Mr. Chairman, there is no need for compulsory farm bargaining, and it is the strong recommendation of the National Grain and Feed Association that H.R. 3535 not be enacted.

Thank you very much.

[The above referred to material is held in the subcommittee file.]

Mr. Panetta. Thank you, Mr. Keating.

Obviously, I think there has been a lot of concern particularly the grain associations and grain councils with regard to legislation, particularly as it applies to wheat.

At the present time, are there bargaining associations in the wheat area?

Mr. **Keating**. There are local cooperatives which act as a bargaining association and also large regional cooperatives, and many of those are members of our association.

Mr. **Brooks**. I wouldn't call grain cooperatives a bargaining agent, Mr. Chairman. Due to the nature of the structure of the grain market itself, where the prices are constantly changing during a day, there is no haggling about a price.

Mr. **Panetta**. There is no bargaining on the issue of price at the present time?

Mr. **Brooks**. No; they operate just as a business entity. They have connections with grain, or the regional marketing cooperatives have connections with country elevators that are cooperatively owned, not all of them, but in this situation, in some instances they are owned and controlled by the regional marketing cooperative and ship everything to them.

Other cooperatives act independently. They will sell to a cooperative or a noncooperative, wherever the price is right.

Mr. **Panetta**. I take it again there is no opposition among your groups to the operation of the present law as it relates to the formation of cooperative groups?

Mr. **Keating**. No, sir, there is not, and in 1967 we did support the amended version of the Agricultural Practices Act.

Mr. **Panetta**. You support the right of growers and producers to gather as cooperatives and to bargain on that basis free of coercion?

Mr. **Keating**. That is correct, sir.

Mr. **Brooks**. It so happens many people in the grain business that also raise grains, their families do, and they are members of local cooperatives.

Mr. **Panetta**. Again, your biggest concern is what, the mandatory aspects?

Mr. **Keating**. Mandatory aspects, and what we have great concern about, Mr. Chairman, is that these bargaining associations, if they become fully effective, that you create a monopoly situation and they are, of course, exempt under the antitrust laws in that regard, and only section (2) of the Capper-Volstead Act gives any relief whatsoever, and that has never been used by the Secretary.

Mr. **Brooks**. I think we are concerned also with the tremendous grant of authority here to the Secretary. I don't know what kind of an organization is envisioned here, but if you read one of the sections which I cited in my text, authorizing appropriations, I get the feeling it is going to be as big if not bigger than the National Labor Relations Board, and Mr. Gillen recounted in his statement what the personnel situation is there.

Now, not only that, but there is unlimited authority in the Secretary, and this is to us at least is very disconcerting and to everybody in the grain business.

The language of the first part of the act there, the whole thing is arbitration at his discretion, recordkeeping, according to the ways he wants to have them kept.

Mr. **Panetta**. There is no question it involves a mechanism at the Department of Agriculture.

Mr. **Brooks**. A whole new department over there in one extreme or a substantial creation of a department that is going to be duplicating or an agency within it that will be duplicating things done elsewhere, and I don't like to talk in broad, general terms, but as I studied this act I got the feeling that if Congress were to approve it they would be creating a Frankenstein monster that would come back and haunt them, and I have been around a little while. I don't usually use those terms.

Mr. **Panetta**. You have seen a lot of those monsters come and go, and maybe not go.

Mr. **Brooks**. Come and go.

Mr. **Panetta**. I guess in the grain area, I think there are legitimate questions.

The real concern that I see is particularly in the fresh fruit and vegetable area where it's not a question of taking that fresh fruit and vegetable and storing it.

You have either got to go to the processor and he has got to give you a deal or that is it. Those are the situations that have produced the grossest examples, it seems to me, of the problem of implementing the 1967 act, because in those situations the farmer is caught between a rock and a hard place.

He either takes that price or that is it.

Mr. **Brooks**. If you have a truckers' strike in the meantime you are in the same boat.

Mr. **Panetta**. Well, that's right. I guess the fresh fruit and vegetable people are the ones that talk about free market system. That is what it's all about. They live and die depending on what that price is at the marketplace without any Government support prices, so they need all of the protection they can get, at least in the negotiation process.

That is one of the areas of legitimate concern.

Thank you both for testifying and for your patience in waiting. I appreciate your taking the time to present the opinions of your groups.

That concludes the hearing on H.R. 3535.

At this point, there is the possibility of field hearings that will be conducted on the legislation as well.

Also, for anyone who wishes to submit written statements for purposes of the record, the record will remain open for that purpose, and those that wish to submit any additional comments are free to do so.

I wish to thank all of those that have testified in the last 2 days for their patience and for their endurance, and also for their views with regard to this legislation. It is an important issue, and the committee appreciates having those views in order to try to determine what is in the best interests of the people.

Thank you very much.

Mr. **Brooks**. Thank you.

Mr. **Panetta**. The hearing is adjourned.

[Whereupon, at 3:55 p.m. the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition adjourned.]

[Additional material submitted follows:]

STATEMENT OF AMERICAN CORN MILLERS FEDERATION ON THE NATIONAL AGRICULTURAL BARGAINING ACT OF 1979 (H.R.3535)

The American Corn Millers Federation is a trade association representing approximately 70% of the milling capacity of the dry corn milling industry in the United States. Our members purchase and process approximately 150 million bushels of corn per year for food, feed and certain industrial uses.

The Federation strongly opposes the "National Agricultural Bargaining Act of 1979" (H.R.3535).

It appears to the Federation that this ill-advised legislation will lead to numerous undesirable results without conferring any corresponding benefit upon the general public. The legislation encourages monopolization of the sale of agricultural products and will consequently result in increased food prices and decreased food quality. Furthemore, the legislation will result in increased government regulation, for those food processors who must deal with these accredited associations.

The legislation is particularly inappropriate when applied to agricultural products such as corn, since farmers who produce corn are already protected by numerous forms of legislation.

I. H.R. 3535 Can Result In Monopolization Of The Sale Of Agricultural Products, Increased Food Prices And Decreased Food Quality

H.R. 3535 stacks the cards against independent producers of agricultural products and forces such independent producers into joining associations of producers of agricultural products. The provisions of this Act will make "handlers" (i.e., food processors) extremely reluctant to purchase from independent producers. Every time a handler contracts with an independent producer the handler will be taking the risk of being charged by an association with refusing to deal with the Association, an unfair practice under Section 4 of the Act. Rather than bear the expense of continually defending such charges, many if not most handlers will be forced to turn their backs on independent producers and deal with the Association. The result of this of course will be that producers will be forced to join associations.

When the independent producer joins an association, a trade-off occurs. The money which the independent producer had spent on quality of goods and services to the customer will be transferred to the association in the form of dues. Section 5(b) of the Act insures that members of an association need not worry about such things as goodwill, quality of food products or service to handlers.

For under this section, if a handler purchases a product from other producers under terms more favorable than the terms negotiated with an accredited association for such a product, he must offer the same terms to the accredited association. This would create an impossible situation for buyers of corn, wheat and other products which are traded daily on national commodity exchanges and/or purchased from individual producers, country elevators, and so forth. Such prices change by the minute in these markets. The question is how, over a period of a few weeks or months, a handler could offer the "same terms" to an Association?

The bill seems to assume that a handler may buy from only one or two sources, as is true in the case of highly specialized products, or that he may buy only from "producers", which is not always the case.

Of course, once the independent producers join an association, the association could have a monopoly and the inevitable result of such a monopoly is increased prices. Many if not all handlers will be forced to pass on part or all of these price increases to the consumers.

In summary, it can be seen that H.R. 3535 can lead to a monopoly in the sale of agricultural products, which in turn will result in the two unavoidable evils of monopoly: increased prices and decreased quality of service.

II. H.R. 3535 Represents an Unwarranted Interference by the Government in the Free Enterprise System

The Federation trusts that the members of the Subcommittee area aware of the fact that the great majority of Americans are opposed to the increasing interference of government in the day to day conduct of American business. It would appear that this fact alone would be sufficient to merit the rejection of H.R.3535. For H.R.3535 represents yet another piece of legislation which will result in excessive regulation and bureaucratic wheel-spinning without conferring any benefit upon the general public.

Under Section 4 of the Act, handlers are prohibited from refusing to deal with or discriminating against any producer because of the producer's membership in an association; furthermore, all handlers are required to bargain in good faith with an accredited association. Apparently the Department of Agriculture must further define the terms "refusal to deal", "discrimination" and "good faith negotiations". In the area of labor law these terms have generated tremendous volumes of litigation and rule-making, and yet there is still no clarification of what these terms mean precisely. The Federation does not believe that there is any basis to believe that the U.S. Department of Agriculture will be any more successful in defining these terms than the National Labor Relations Board has been. But we do know that it will create a burdensome and expensive new bureaucracy within USDA which nobody should want.

While Section 4 of the Act purports to regulate associations as well as handlers, it is clear that the bulk of the regulations fall upon the handlers. For example, Section 4(b)(2) prohibits an association from coercing a handler to breach a contract with another association. The Act however does not prohibit associations from coercing handlers to breach contracts with independent producers, and thereby implies that such coercion may occur and will be condoned. Of course, the fact that the bulk of the legislative burden falls upon the handlers and not the associations is ironic since it would appear that the monopolistic associations would merit more regulation, than those who must deal with the monopolists.

Perhaps the most objectionable provision of the Act is that portion of Section 8 which would allow the Secretary of Agriculture to establish a procedure for compulsory and binding arbitration if he finds that an "impasse in bargaining" exists and that such impasse will result in a serious interruption in the flow of products to consumers or will cause substantial economic hardship to producers or handlers involved in the bargaining process. This provision allows extraordinary interference by the government with the free enterprise system; indeed the government can assume total control of the purchasing process. Not only is the purchaser told with whom he must negotiate, but he may also be told, through binding arbitration, that he must purchase goods and must do so at a designated price. This extent of government intrusion into the business decision-making process constitutes an unprecedented and unwarranted abrogation of the fundamental right of freedom to contract, and should be summarily rejected by this Subcommittee.

III. H.R. 3535 Is Particularly Inappropriate When Applied To The Purchase Of Corn Since Corn Producers Are Amply Protected By Other Legislation

H.R. 3535 is particularly inappropriate when applied to the purchase of corn since corn producers are already amply protected by numerous other legislative provisions including:

1.) The Food and Agriculture Act of 1977 - This Act contains a set aside program with a price guarantee of $2.20 per bushel for those who participate, and a diversification payment of $1.00 per bushel times the number of acres diverted; the Act also contains a loan program providing $2.00 per bushel; the Act also contains resale limitations whereunder the Commodity Credit Corporation cannot sell corn below 150% of the loan rate.

2.) PL 480-corn sales and product donation.

3.) The Agricultural Act of 1949 - This Act provides special protection for farmer cooperatives.

4.) The Agriculture Fair Practices Act of 1967 - This Act prevents discrimination by handlers against producers on the basis of membership in an association.

There is clearly no need for additional legislative protection for corn producers, especially where, as is the case with H.R. 3535, such legislation will lead to monopoly, inflation, decreased food quality and excessive government regulation.

IV. Conclusion

H.R. 3535 is clearly contrary to what the American people are asking from their legislators today. The Act fosters monopolization in the area of the sale of agricultural products and will consequently result in increased prices to consumers and decreased food quality and service. Furthermore, the Act significantly adds to the regulatory morass in Washington and represents an unprecedented interference with the fundamental right of freedom of contract. As applied to production of corn, which is already amply protected by numerous forms of legislation, H.R. 3535 is particularly inappropriate.

The American Corn Millers Federation therefore respectfully requests members of this Subcommittee to reject H.R. 3535, or at the very least, exempt corn products from such legislation.

Respectfully submitted,

Fred H. Mewhinney

Fred H. Mewhinney
President
American Corn Millers Federation

afma

STATEMENT OF
OAKLEY M. RAY, PRESIDENT
AMERICAN FEED MANUFACTURERS ASSOCIATION

The American Feed Manufacturers Association (AFMA) is the national trade association representing manufacturers of livestock and poultry feed. AFMA members produce more than 70 percent of the primary formula feed sold in the United States. AFMA members are major purchasers of grains and other feed ingredients. Feed accounts for an average of about two-thirds of the farmers' costs of producing meat, milk and eggs.

AFMA is opposed to the enactment of H.R. 3535 and other mandatory farm bargaining legislation for essentially three reasons. First, by eliminating the freedom of buyers and sellers of feed ingredients to choose the persons with whom they will do business, H.R. 3535 would be destructive of the free enterprise and free market system in which animal feed is manufactured and sold; second, the mandatory bargaining system created by this bill would require the establishment of a new federal regulatory entity whose operations would not only be intrusive, but would be extremely costly for the public as well as the regulated processors and producers, and third, bargaining associations would be given a significant, and perhaps decisive, advantage under this legislation to the detriment not merely of processors but of independent producers who wish to remain independent of such associations.

AFMA is not opposed to the concept of voluntary bargaining for farm products. Voluntary bargaining has been successfully used in some sections of agriculture for many years. It is the coercive nature of the legislation under consideration that engenders our opposition. There has been no showing of need for a mandatory farm bargaining bill, nor do we believe that any need can be shown.

AMERICAN FEED MANUFACTURERS ASSOCIATION, INC. • 1701 N. FT. MYER DRIVE • ARLINGTON, VA 22209 • TELE 703 / 524-0810

Impact on the Market System and U.S. Agriculture Would be Disastrous

Under this legislation, producers of a given agricultural product could join together into a monopoly which could conceivably control 100 percent of a given geographic area's supply of that product (corn, milk, beef, etc.) or which could effectively control the supply at a lower percentage level. The bill would require processors to bargain in faith, an obligation which carries with it the intent to reach an agreement.

Obviously, any bargaining association would have the incentive to "bargain" for an exclusive contract. Therefore, with or without 100 percent control, the association could effectively force individual marketing and processing firms (who would not be permitted to join together) to not only bargain but to reach agreement concerning price and other contract terms. If producer bargaining associations were to use the monopolistic power which would be made available to them by this legislation, any individual processor would be almost completely at the mercy of the bargaining association. The processor could be forced to one of the alternatives of going out of business, going into basic production of the product needed for his processing plant, or meeting the terms demanded by the bargaining association.

The potential for abuse under mandatory bargaining has long been recognized. The June-July 1971 issue of the Rocky Mountain Union Farmer included an article entitled "Farmers Union Washington Comment" which stated "The one indispensable, pre-condition, for successful bargaining is supply management. The purpose of bargaining is to raise prices above the level of the market. It is not to stabilize the flow of commerce, to assure suppliers for processors, or provide other conveniences for handlers . . . ."

[illegible]

The proposed legislation is of major significance to consumers. It seems unlikely that consumers over the long run would be willing to give food producers the authority to operate as monopolies, with the power to set the price of the nation's food supply. If this proposal should pass before consumers become fully aware of its ramifications, they are likely to react in such a way that the end result may be less favorable to agricultural producers than the present market price system.

Bargaining associations would have to establish prices above normal market levels to be considered successful by their members. Consumers would buy less of a given product when the price increased. The higher price would encourage additional production not justified by market demand. Existing producers would want to increase output. Crop farmers for example would want to use more fertilizer per acre, plant more acres, etc. More new farmers would want to produce than would otherwise be the case. Production or marketing controls would be necessary to control output which otherwise would result in prices falling below their original levels.

Bargaining associations would have to establish prices higher than world levels if they were to be considered successful by their members. The result would obviously be massive disruption of export markets. Customers and potential customers for U.S. agricultural exports will not pay more for U.S. products than for the same products produced in other countries. Thus, if bargaining associations were successful in their objective of establishing prices at artificially high levels, it would become impossible to export agricultural products without a costly subsidy to make up the difference between the world price and the U.S. price. This would be a disastrous loss to U.S. agriculture.

[redacted]

Agricultural exports last year totaled about $27 billion and utilized the production of about 100 million acres, or almost one of every three harvested acres. More than two-thirds of our production of rice was exported, more than 60 percent of our wheat, more than half of our soybeans and soybean products, more than half of our cattle hides, more than 40 percent of our cotton and tallow, more than a third of our tobacco and 30 percent of our corn.

If the United States permitted food and fiber prices to be fixed by agreement higher than world levels, it would also be faced with a major import problem. Unless artificial trade barriers were erected to keep the products from other countries out, U.S. agriculture would lose part of its domestic market as well as much of its export market.

The Proposed System would not be Voluntary for Producers or Processors, Contrary to the Sponsors' Assertions

The proposed legislation would coerce not only processors--who would be required to "bargain" with accredited associations--but producers as well. The threat of being foreclosed by association exclusives would "encourage" independent producers to join associations. The inability to obtain any better price than is granted to an association would provide additional incentive for even a top quality producer--who could normally command a premium, to throw in his lot with an association. Moreover, a processor, threatened with a charge of refusal to bargain in good faith if he deals "on the side" with an independent producer, might cut off the independents' access to him. Thus the producer would effectively, if indirectly, be coerced into joining the association. However, the bill goes further, and would permit direct coercion; H.R. 3535 would abolish the Agricultural Fair Practices Act, which prohibited associations from coercing producers into joining.

We believe that the individual producer should have the freedom and right to market the product of his own labor and capital without being forced to hire a bargaining agency he might not wish to hire.

If the bill passes, it would be the first time in the history of the United States that a businessman would be required by law to bargain with a third party representing two or more of his suppliers or potential suppliers, regardless of whether or not he wanted to do business with the suppliers represented by the third party, and regardless of whether the businessman and his present suppliers were satisfied with their existing relationship.

Higher Costs for Livestock and Poultry Producers

In most cases today the livestock and poultry producer buys feed instead of raising his own. If this legislation should be used by producers of feed grains, soybeans, etc. to force feed ingredient prices to artificially high levels, costs to livestock and poultry producers would be increased correspondingly. This would be especially important to livestock and poultry producers in the Northeast, South and Western regions of the country which have to import much of their feed ingredient supply from the Midwest. It would also be important to the many Midwest livestock and poultry producers who buy much of their feed requirements.

About 160 million metric tons of feed concentrates are fed to U.S. livestock and poultry annually, according to the USDA. Most of these feeds are produced by U.S. farmers. As an example, if feed concentrate prices were increased by $10 per ton, livestock and poultry producers would have their feed costs raised by $1.6 billion per year. Thus consumer expenditures for meat, milk and eggs would have to increase by at least $1.6 billion per year before livestock and poultry farmers would be as well off as before.

AFMA

Disruption in Feed Ingredient Marketing and Feed Production that would be Caused by the Proposed System

The present market price system has proved itself, and frequently, routinely, quickly and efficiently makes important adjustments which a system based on bargaining could handle slowly and only with great difficulty and inefficiency--if at all. The following questions and examples suggest what AFMA believes would be major weaknesses in a system where agricultural prices would be based on strength around the bargaining table:

1. If a feed manufacturer contracted early in the year with a corn bargaining association in his area for delivery of a given amount of new crop corn, what would happen if the bargaining association was unable to deliver at harvest time due to an unexpectedly short crop? Would the association be liable financially for inability to fulfill the contract? How would this processor obtain the corn supply he needed? Processors in other parts of the country probably already would have bargained in advance for production in their areas. Under the present system, in a matter of minutes, the manufacturer could locate the supply he needed in another part of the country, determine the price, and place his order.
2. Under the present system the 9,000 smallest feed manufacturers can buy major feed ingredients (corn, etc.) for essentially the same price as the largest feed manufacturer in the country. If the price each had to pay was determined by the amount of muscle he could exert around the bargaining table, it is doubtful if most of these small companies could survive.

3. Under the present system, if there is a surplus of corn at harvest time and a short crop of another feed grain, the prices of these two commodities adjust almost immediately to the point where just enough users switch so that the imbalance disappears. It is questionable whether such adjustments could be made efficiently under a bargaining system.
4. Bargaining would require tremendous amounts of time, adding substantially to marketing costs. To illustrate the problem, each of the 10,000 or so feed manufacturers would have to bargain separately. In addition, each firm requires several ingredients--not just one. In addition, different ingredients probably would be handled by different bargaining associations. In addition, there might well be several different bargaining associations which would want to bargain with a given firm to supply a given ingredient--perhaps a Farm Bureau association, an NFO association, a Farmers Union association and others.

   The negotiation of a major contract might well take weeks or even longer as routinely happens with labor negotiations. If we switch to a bargaining system of determining agricultural prices, it is easy to see how many handlers could have bargaining negotiations going on almost continually throughout the year. Bargaining associations probably would find it to their advantage to hire professional negotiators. Then handlers probably would have to hire professional negotiators. Obviously the costs of bargaining would be great.

5. If producers of a given product are given monopolistic power, it is almost a certainty that at least some of them will force artificially high prices. This would greatly accelerate the development of synthetic substitutes for agricultural products. Such synthetics are already making inroads in some markets.
6. If bargaining between an association and a handler reaches an impasse, and the association filed charges against the handler for failure to bargain in good faith, the handler's plant or plants might be closed over a long period of time, with his employees laid off, loss of customers, loss of profits, etc. If the Secretary or a Court eventually ruled that the handler was innocent of the charge, would the bargaining association be liable for the financial losses suffered by the handler and his employees?
7. Broiler industry profits are measured in tenths of a cent per pound. If a bargaining association in a major broiler producing state such as Georgia, Arkansas, Alabama, North Carolina, Mississippi or Texas was able to gain control of most of the local broiler supply, the association might well be able to establish payments to growers a half cent or a cent per pound higher than competitive market levels. If this occurred, the state's broiler industry would be placed at a major disadvantage relative to other broiler producing states which had not experienced a similar increase in cost. If this continued over any extended period of time, many broiler producers in that state would undoubtedly be driven out of business. Broilers from other areas would take their markets.

The Legislation is not Needed

This legislation does not appear to be needed to protect producer interests. Producers under the Capper-Volstead Act already have a special exemption from the antitrust laws so that they can join together to process and market their products, establish their selling prices, and otherwise regulate the marketing of their products. In almost every major agricultural industry, producers have formed cooperatives which are among the largest firms in the industry. Thus most producers who are not satisfied with their relationship with privately-owned handlers already have the option of doing business with cooperatives which are producer-owned and controlled.

In addition, producers already have been granted special legislative authority to join together into bargaining associations without being discriminated against in any way. However, agricultural bargaining associations have generally not been able to convince the majority of farmers that they would profit by selling their products through a bargaining association. This suggests that much of the demand for compulsory bargaining legislation comes from the organizers of the associations who are looking for members, rather than from the producers themselves. If producers were really interested, compulsory bargaining legislation would not be necessary to insure the success of bargaining associations.

Conclusion

AFMA believes that every producer should have the right to join a bargaining association if he so desires. We also believe that an agricultural handler should have the right to do business with bargaining associations of producers if he so desires. Some handlers have conducted business in this manner for many years. However, we feel strongly that this should be a voluntary process.

No handler should be forced to do business with a given supplier if he does not wish to do so, and no producer should be denied the right to deal individually at any time with any handler he chooses.

Therefore, AFMA urges you to reject this proposed legislation which we feel would be contrary to the best interests of producers over the long run, as well as opposed to the best interests of consumers and processing firms.

Oakley M. Ray

Oakley M. Ray
President
American Feed Manufacturers Association

STATEMENT OF THE AMERICAN MEAT INSTITUTE
BEFORE THE SUBCOMMITTEE ON DOMESTIC MARKETING
OF THE HOUSE COMMITTEE ON AGRICULTURE CONCERNING
THE NATIONAL AGRICULTURAL BARGAINING ACT OF 1979

July 20, 1979

The American Meat Institute, national trade association of the meat packing industry appreciates the opportunity to submit these comments concerning the proposed National Agricultural Bargaining Act of 1979.

We represent approximately 300 meat packers and processors doing business in all of the fifty states. We oppose this legislation, in principle, as we have in the past. We believe that it places far too much power and authority in government hands than is needed or is desirable.

H.R. 3535 would extend the legal rights of farmers to engage in collective bargaining over price and other sale terms of farm commodities. The stated underlying purpose for this legislation is to safeguard the rights of farmers to freely join together in cooperative associations for purposes of effective marketing and bargaining. This is a laudable purpose and one we wholeheartedly support. However, it is clear that there exists today, an ample body of laws that accomplish that goal.

First, there is the Capper-Volstead Act that allows farm producers to form cooperatives to collectively set prices, among other bargaining tools, without violating the antitrust laws. Secondly, there is the Agricultural Fair Practices Act of 1967 making it unlawful for processors of agricultural commodities to discriminate against any producer because of his membership in or contract with an association of producers. Thirdly, there are the antitrust laws that prohibit restraints of trade that are a result of combination or conspiracy or with a view toward monopolization. Therefore, aside from the obvious costly bureaucratic machinery that would be necessary to administer this law we object to its passage on the grounds that the existing laws are more than adequate to protect the market power of food producers.

More importantly, the problems addressed in H.R. 3535 have no reasonable relation to the livestock market and therefore the proposed bill should, if seriously considered, exempt livestock. The fact is that the natural market forces in our industry are working well. Livestock producer groups are not arguing in favor of the legislation. As a matter of fact, most oppose the legislation for the same reasons we do.

It is important that we note for the record the existing body of rules under the Packers and Stockyards Act that deal precisely and effectively with these issues. In the nearly 60 years of its existence, the Packers and Stockyards Act has been amended and implemented through a large body of regulations and many court decisions. It regulates not only the marketing of livestock, but the practices of packers. Its broad prohibition against unfair, unjustly discriminatory or deceptive practices by packers, stockyard owners, dealers and market agencies goes much further in protecting producers that the farm bargaining legislation currently under consideration.

While the Packers and Stockyards Act does not flatly require negotiation with all sellers under all circumstances, under its broad language, it is possible to examine the circumstance of a refusal to deal and determine whether there has been in fact an unfair, unjustly discriminatory or deceptive practice. This, in our opinion, is vastly superior to the outright requirement of negotiation that would be imposed by H.R. 3535 - a requirement that in some cases could produce an undesirable result.

It is our recommendation that H.R. 3535 not become law. If it does move toward passage we urge that the bill be amended to exempt all livestock.

apricot producers of california

July 19, 1979

The Honorable Fred Richmond, Chairman
Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition
House Agriculture Committee
1301 Longworth House Office Bldg.
Washington D.C. 20515

Dear Mr. Chairman:

We submit for consideration by the Subcommittee the enclosed statement in support for passage of H.R. 3535, the "National Agricultural Bargaining Act of 1979" as introduced by Rep. Panetta. We consider this letter as part of that statement.

Because the recent hearing on the bill washeld during the peak harvest of apricots, it was impossible to send a representative to provide oral testimony. I'm sure other California associations found themselves in the same circumstance, by virtue of either harvesting or conducting negotiations.

We regret this since we have had direct experience with the need for legislation such as Congressman Panetta has offered. We have members who know full well what it is to be caught between the responsibilities of bargaining association membership and the relationship with their processor.

We are convinced that the timing of the hearing prevented adequate testimony by production agriculture, especially from growers themselves. The ample supply of opposition viewpoints at the hearing is a reflection more of who could get away to testify than of who is concerned about this bill's provisions.

We strongly urge the Subcommittee to hold field hearings on the proposed act. It is the only way you will hear first hand testimony concerning unfair practices that injure the bargaining process.

The experience of commodity bargaining is well documented in California, across a variety of crops. We urge at least one field hearing in this state. I'm sure the Subcommittee could count upon an active roll of participants. We realize that there is expense involved, but this bill is important to the future of agriculture and to the well being of the nation's economy - far greater than perhaps most realize.

Sincerely,

Ralph N. Watters, Executive Vice President
RNW/jl

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APRICOT PRODUCERS OF CALIFORNIA

As an agency which has spent the last five years establishing itself as the bargaining agent for apricot growers, we are intimately familiar with the struggles and frustrations encountered in becoming a bargaining association.

Because we have found that existing law - both state and federal - can create more problems for the bargaining process than prevent them, we strongly support the passage of HR 3535, the "National Agricultural Bargaining Act of 1979" as introduced by Rep. Leon Panetta.

We know the bill to be not an effort to gain unfair advantage in the bargaining process, but rather, an attempt to provide a stable, fairly regulated environment within which more meaningful bargaining can take place.

It is alleged by opponents to the bill that it is a move by grower associations to gain "monopolistic control" of the bargaining process. If anything threatens to monopolize the process it is the reduction of food processors into fewer entities, accompanied by the absorption of some into large, often multinational, corporations. Competition among processors remains fairly keen, but decision-making and purchasing power are unquestionably becoming concentrated. In California, between 1960 amd 1973, there was a fifty percent drop in the number of processors who handled bargained commodities. For us in this industry, there remain eleven canners of apricots where only a dozen years ago there were more than twenty. Four of the present eleven are cooperatives, grower-owned, which do not bargain.

The provision for good faith bargaining in HR 3535 offers no more potential for bargaining associations to become bastions of monopoly than that which they now possess. Unlike the Michigan act, the bill does not insist upon exclusive ageny status for associations but merely provides a process for accreditation. With association membership remaining voluntary and with no burden of mandatory purchasing and price settlement upon processors, the determining factors which rule the bargaining process remain, first and last, market conditions.

There are some strong bargaining associations presently at work. Are their successful efforts a major source of our national inflation rate? Does their existence and effort reap such unfair profit for growers that they become burdensome "pass through" costs to consumers? Hardly. Cost studies clearly demonstrate that the critical factors in rising food prices are the ever escalating costs of packaging, energy, transportation and direct labor.

Bargaining associations seek fair and reasonable prices that will keep their growers or ranchers in business. By necessity this means seeking advancement (but sometimes negotiating a decrease) in raw product prices. Only the most foolish and irresponsible seek opportunistic prices. Doing so destroys the very markets and customers they need to survive. This is the quickest lesson the successful young bargaining association learns.

Instead, bargaining associations know that they need to curb excessive price fluctuation and build stability in marketing their crops. This is why such things as grade standards, quality of production, efficient harvesting and industry communications are viewed as important as price determination. In practically every commodity, including our own, with a bargaining group, it is that association which is taking the lead in these important areas. Processors directly benefit from their work as well.

HR 3535 will help the formation of associations necessary to achieve such goals and to tag the measure with the buzz words of "inherently inflationary" is to mislead. Indeed, our own organization spends more time explaining to its members why prices can't be higher than they are (even in a short crop cycle that we presently have) than it does entreating processors to pay more than they usually offer. All bargaining associations must, in their members' best interests, remain sensitive to the dependency producers have on the rest of the food chain. Price sensibility, though it must represent profitabilty, is a matter of survival in commodity bargaining.

Another charge is that in stating handlers must meet with accredited associations and bargain in good faith, the proposed act unjustly bolsters the power of bargaining associations and ensures their financial wealth and position, while creating an uncompetitive posture for the non-member producer. This again is a deceptive point, inconsistent with the association experience. The implication is that bargaining associations should have enough growers to effect a strong bargaining position without the need for HR 3535; that the bill somehow artificially forces processors in the direction of having to deal with only association members and not with independent producers.

First, most associations don't want all producers of a commodity in their ranks, primarily for reasons of quality production, or lack of it. Secondly, most non-member growers avoid membership not because they feel the association isn't necessary or that the processor is their true friend, but simply because they don't want to part with dues or retain contributions and are content to take the free ride from their fellow producers who fund the association. HR 3535 doesn't change this condition; there can be a fair number of independent producers with whom processors may deal.

HR 3535 then does not intend to threaten the competitive posture of any producer. More influential in that regard is what the association does to attract the most efficient growers and highest quality production to its efforts and how professionally it handles itself.

What we see as vital in HR 3535 is its protection for associations from the deliberate disruptive use of non-members and members alike to subvert the goals of the bargaining association. Such activity is possible regardless of how much volume of a commodity's production the association controls. This is why the bill's unfair practice definitions, spelled out across the nation, are so important. Equally important are the specified enforcement alternatives that provide, when all other private methods may fail, the promise of some form of fair judgement on issues.

Our experience in 1975 with one processing concern stands as a good example of what can occur and says much about the impact even one processor can have on the bargaining process. In that, our second year of bargaining, we found our entire pricing program with all processors jeopardized by the actions of a small freezer here in California.

It began with the processor refusing to bargain. It continued with their offering prices well below those we were asking, to both our members and independents. It ended with our seeking other buyers for some of the affected growers, losing the membership of many, and paying one for loss of fruit.

With the processor bypassing the counteroffer route and claiming that he was purchasing grade apricots at $ 60 per ton less than our asking price, he created a ripple effect across our negotiations with other freezers, canners and driers. Although we represented well over half the production of apricots (seventy percent in canning alone), our pricing program and credibility was threatened.

Growers reported to us clear violations of the California Agricultural Code, which supplies stronger language than the Fair Paractices Act of 1967 - stronger, but not strong enough. Our charges ranged from the making of defamatory statements about association personnel and activities to refusing to bargain, discriminating against association members, and enticing members to withdraw under threat of no purchase.

We took the case to the State of California for redress under the existing law. We found case law severly lacking. We found no desire by the administration to press the issue. Officials admitted to us that the legislation was so vague and unproven that they had not even established procedures or funding to enforce it. Finally, after constant insistance on our part, market enforcement officials visited the freezer and obtained assurances of their future intent to follow the law.

We were unsatisfied with the extent of the enforcement, but since the season's damage had been done and there was little merit in incurring the expenses of court action to bring a violator to task, our association turned its eyes toward the future and dropped the case. From that point on, however, the need for a stronger bargaining code was apparent to us. We had been hamstrung in proving what we knew to have been discriminatory and unethical behavior by a processor.

Field hearings should be held to augment the Subcommittee's review of HR 3535, allowing the opportunity for growers and their representatives to document such unfair practices as testimony that the actions of one processor, given the proper conditions, and knowing that he is subject to a vague and weakly enforceable law, can have a devastating affect upon the actions of a bargaining association and growers' economic return.

This is the activity that we see HR 3535 rightfully aimed at. It is a measure which guarantees no excessive power to either processor or producer. We view it as refined enabling legislation which augments the general concepts of Capper-Volstead and sets reasonable and enforceable standards of bargaining performance.

For the most part, we feel the relationships between established bargaining associations and handlers will remain as they are under HR 3535. We would apply for accreditation and expect the Act's provisions to be honored. But they contain no radical departures from some of the understandings we have begun to cultivate with progressive thinking processors, e.g. the use of arbitration to settle price impasse. Contracts will remain the governing force in sales to handlers. But where contracts are ignored, and state laws weak in setting good faith guidelines, HR 3535 can provide a bottom line to which all bargaining parties in every state must pay attention. Although the measure rightfully leaves much conduct to the parties themselves, it can keep us all honest.

For this reason we feel the fears of an ungainly and costly bureaucracy to administer the law's provisions are unfounded. New associations meeting opposition to their existence would undoubtedly seek accreditation and use the act's provisions as an aid to establish themselves as an effective bargaining unit. Its strongest value though lies in just being a comprehensive umbrella under which bargaining roles are more clearly defined and being an incentive to conduct meaningful bargaining activities at the local level.

Agriculture is a champion of reducing government interference and regulation in business, including the marketing of agricultural products. Our association agrees with this need - that there is much that could be done to free the system up and make agricultural more productive. So asking for this legislation - HR 3535 - is not easy. We do it only because it is necessary.

HR 3535 is not anticompetitive, inflationary, or opportunistic. It is a proper balance between the free choice of bargaining parties to act responsibly and professionally and the regulation needed to prevent injury by those who care not to. We need its defined procedures, its stated unfair practices. At stake is the economic integrity of our nation's food producers. The future may well prove them to be our greatest asset, worth protecting.

The Apricot Producers of California

Ivan E. Bays, President
Ralph N. Watters, Executive Vice President

Statement On H.R. 3535
By The Cotton Warehouse Association of America
To The Subcommittee On Domestic Marketing
Consumer Relations, and Nutrition
Of The House Agriculture Committee
July 16, 1979

The Cotton Warehouse Association of America appreciates this opportunity to present its views on the Agricultural Bargaining Practices Bill, H.R. 3535.

This Association has members in all of the major cotton producing states and represents warehouses handling a large part of the U.S. cotton crop. They receive cotton from the gin, issue receipts, weigh, store, and break out the bales and ship them to textile mills upon order from their customers.

The facilities and services provided by the warehouseman are an essential bridge expediting the flow of cotton from the producer to manufacturer. Disruption of this service, provoked through regulatory edicts or other forces, not only adversely affects the warehouseman and those dependent upon him but also weakens cotton competitively in its bid for markets.

The cotton warehousing industry views the proposed Agricultural Bargaining Practices Bill as a threat to traditional buying and selling practices in the cotton industry and consequently to the efficient and orderly flow of cotton from farm to mill. The disruption it portends not only would adversely affect buyer and seller but the suppliers of goods and services to them and eventually the over-all welfare of the cotton industry.

The marketing system for cotton has evolved over many decades into an efficient mechanism relatively satisfactory to buyers and sellers. While not wholly perfect, it has served well a commodity grown under widely varying conditions, with a diversity of quality and grades, and with continuing fluctuation in supply and demand.

Our Association has no quarrel with the over-all objective of the Agricultural Bargaining Practices Bill. It might or might not be beneficial to the producers of vegetables, fruits, or other crops harvested within a short time and with a relatively limited number of buyers.

Application of the provisions of the bill to cotton, however, would be highly impractical if not ruinous. Cotton is different in that it is sold year-round to buyers around the world and prices change throughout each day depending on the prevailing economic climate and other factors. Unlike lettuce or strawberries, cotton is not a persishable crop.

To protect himself from the vagaries of the market, a grower uses the facilities of the New York Cotton Exchange. He sells futures and contracts to deliver a given amount of cotton at a set price in a specified month. Also, he may obtain competitive bids from cotton merchants and sell his crop prior to harvest.

Section 5(b) of H.R. 3535, however, would destroy the delicate balance that has long existed in the cotton merchandising process. It would restrict the buyer's freedom to deal with growers, impeding the orderly flow of cotton and its efficient marketing not only to the disadvantage of buyer and seller but to intermediate handlers such as warehouses, to textile manufacturers, and eventually to the consumer.

Under Section 5(b) if a handler buys a product "from other agricultural producers under terms more favorable to such producers than the terms negotiated with an accredited association for such product, he shall offer the same terms to the accredited associations."

Application of this provision to cotton would be devastating to its merchandising. Traditionally, a buyer may contract in the spring for delivery of cotton when it is harvested in the fall. He hedges this practice by selling an equivalent amount of cotton in the futures market.

Under Section 5(b), however, if the price of cotton rises and the buyer purchases cotton from other producers at a higher price, the law would force him to change the terms of his earlier contract with the association to reflect the higher price. He would have to buy back his futures contract at a loss and hedge again with a sale of futures at the higher price. If prices kept rising, this would force the buyer to repeat this process each time he bought cotton from growers who were not association members. The buyer necessarily would be restricted to buying all of his cotton on one contract from a single association or would have to buy it all outside the association. This would be highly impractical and not in accordance with traditional practices.

One can readily envision the chaos that would result from the above restrictions, not to mention a mind-boggling snarl of record keeping and red tape.

In view of the threat this legislation poses to the orderly marketing of cotton, the Cotton Warehouse Association of America would respectfully petition that cotton and cottonseed be specifically excluded from provisions of the Agricultural Bargaining Practices Bill, H.R. 3535.

ENRICO FARMS, INC.
P. O. Box 755
Firebaugh, California 93622

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HONORABLE THOMAS S.

July 17, 1979

Honorable Frederick W. Richmond
Chairman, Subcommittee on Domestic
Marketing, Consumer Relations,
and Nutrition of the Committee
on Agriculture
United States House of Representatives
Washington, D.C. 20515

Re: H.R. 3535, Proposed "National Agricultural Bargaining Act of 1979

Dear Sir:

I take this opportunity for presenting my views, as a grower of California agricultural products, with respect to H.R. 3535. Because of the shortness of notice, I was unfortunately unable to appear at recent hearings before your Subcommittee.

My brother and I are the owners of Enrico Farms, Inc., a family farming corporation located in the San Joaquin Valley of California. We own two thousand acres of agricultural land and lease another thousand acres. From 1958 to the present, we have been farming in the Firebaugh, California area, our primary crops consisting of tomatoes, cotton, grain, lima beans, and cantelopes.

We commenced growing canning tomatoes in 1962. From that date to the present, our acreage was as follows:

YEAR(S)	ACRES OF TOMATOES GROWN
1962-1970	Approximately 500
1971	1600
1972	2000
1973	Approximately 1900
1974	785
1975	1150
1976	675
1977	150
1978	373
1979	375

Approximately 90 percent of our tomatoes were grown for privately owned, commercial canners, including NCC Food Corporation, H. J. Heinz Company, Contadina Division of Carnation Company, and Ragu Foods, Inc.

During this period, I was a member of the California Tomato Growers Association, Inc. ("CTGA"), and later was, and presently am, one of its directors. Prior to 1973, the CTGA performed no bargaining on behalf of its members.

In 1973, I became active in organizing efforts on behalf of the CTGA, to permit it to become the bargaining representative for growers of California canning tomatoes in contracting with commercial canners. Immediately following the commencement of my organizing efforts, H. J. Heinz Company cancelled my contract. In the previous year, I had grown 300 acres of tomatoes for that canner.

Notwithstanding such retaliation, I continued my organizing efforts on behalf of the CTGA, with the result that in 1974 the Association was appointed the bargaining agent for tomato growers in the Fresno County area of the San Joaquin Valley. Immediately, I was subjected to further "discipline", in that Contadina, for whom I had grown 300 adres of tomatoes in 1974, advised me that it would not contract with me for the 1975 season.

I attempted to resolve my grievances against Heinz and Contadina through the offices of the CTGA, but was frustrated because its counsel, unknown to me, was simultaneously counsel to another canner of tomatoes, Tillie Lewis Foods. When it became apparent to me that no relief was available through the CTGA, I commenced a civil action in the United States District Court for the Eastern District of California (No. F-75-206-CIV) pursuant to Section One of the Sherman Act, 15 U.S.C. § 1, and pursuant, further, to The Agricultural Fair Practices Act of 1967, 7 U.S.C. §§ 2301 et seq. This action is still pending before the Fresno District Court, and has been joined in by only two other growers of canning tomatoes.

In 1975, the CTGA was appointed the bargaining agent for all growers of California canning tomatoes. In that year, I grew only 200 acres of tomatoes for Ragu, the remainder being grown for a cooperative canner, or for a seed company.

After bringing suit in the District Court, I lost my contract with Ragu and since that time no commercial canner has been willing to contract with me. I believe that the refusal of any commercial canner to contract with Enrico Farms since 1976 constitutes retaliation as a result of my organizing efforts on behalf of the CTGA and as a result of initiation of litigation in the District Court. Because of the District Court's reluctance to grant preliminary relief, I have been unable to obtain a contract for the growing of canning tomatoes for any commercial canner.

I have reviewed the provisions of H.R. 3535 and believe, based upon my experiences in California and based, further, upon information obtained during discovery proceedings in the Eastern District of California, that certain strengthening amendments would greatly aid the purposes which the bill seeks to achieve. These specific suggestions are set forth below.

Section 4(a)(8) (new). Add, as a new subparagraph (8), the following:

> (8) To negotiate with a producer subject to a membership agreement or marketing contract with an association after such association has been accredited pursuant to section 6.

In 1976, one commercial tomato canner, Tillie Lewis Foods, commenced to negotiate with producers for acreage contracts, notwithstanding appointment of the CTGA as the bargaining agent for such producers. To halt this practice, the CTGA initiated an action in the San Juaquin County, California, Superior Court (No. 129285). This suit has recently been dismissed because, under applicable California law (Cal. Ag. Code §§ 54401 *et seq.*), the CTGA was found to lack standing. Enrico Farms' effort to intervene in this action was also denied since I was not then a grower for Tillie Lewis. Because of my experiences, other growers who had signed contracts with Tillie Lewis were reluctant, fearful, or both to personally bring, or intervene in, such action.

Section 4(a)(9) (new). Add, as a new subparagraph (9), the following:

> (9) To cease contracting with any producer who files a complaint with the Secretary pursuant to section 9 or who commences a civil action pursuant to section 13.

Based upon my own bitter experiences, the foregoing provision is absolutely essential to efficient administration and enforcement of the purposes of the bill. I possess first-hand knowledge of the damages which will be sustained by a producer who has the temerity to institute legal proceedings to enforce his rights under fair agricultural practices acts. The refusal of Ragu to contract with me demonstrates the vulnerability of a grower who commences a civil action to enforce his rights. Based upon my own experiences, and based, further, upon numerous conversations which I have had (and as to which I can testify) with growers of canning tomatoes in all areas of California, all such producers support my efforts through the CTGA, through collective bargaining with canners, and through my District Court action. Unfortunately, only two other growers have joined with me because of their not unjustified fear of canner retaliation. If the Congress declares it an unfair practice to refuse to continue contracting with a grower who exercises his rights under H.R. 3535, many of those growers who presently and in the past have suffered quietly would shake off their fears of boycotts and retaliation by canners.

Section 6(b)(2). Add, as a new subdivision (E), the following:

> The association has established an authorized marketing and bargaining committee to negotiate with handlers for the agricultural commodity. The committee shall be comprised of members elected by the members of the association in a secret ballot election. The production of the agricultural commodity shall comprise a significant portion of the total farming operation of each committee member. Members who have any quantity of the commodity contracted with a producer owned and controlled processing cooperative are not eligible to serve on a marketing and bargaining committee for such commodity. Members who are officers, directors, employees or owners of in excess of one percent of the stock of any handler are not eligible to serve on a marketing or bargaining committee for such commodity.

Since I presently grow tomatoes only for cooperative canners, I would not be eligible to serve on any marketing or bargaining committee. Nevertheless, there are two reasons for such a provision.

For a period of time in California, there was a commercial canner, T. H. Richards Canning Company, which was owned by a large grower. T. H. Richards, in turn, purchased tomatoes not only from such large grower, but also from other, small growers. Such large grower could not fairly represent the interests of true commercial growers. Obviously, the inclusion of such a large grower in the membership of any marketing or bargaining committee would have been detrimental to the best interests of the CTGA. While the owners of T. H. Richards were individual members of the CTGA, none were members of its bargaining committee.

The second reason for proposed section 6(b)(2)(E) concerns producers who grow for cooperatives. As a result of information generated through discovery proceedings in my District Court action, and based upon my experiences as a CTGA director, I have become increasingly aware of a conflict of interest which exists between, on one hand, producers who sell to cooperatives, and on the other, producers who sell to commercial canners. In the tomato industry, cooperative canners must compete with giants such as H. J. Heinz, Campbell Soup, Carnation, Del Monte, Hunt-Wesson, Tillie Lewis, Libby, McNeil & Libby, and Ragu. On the other hand, cooperative canners do not enjoy the brand recognition or shelf space necessary for effective competition with commercial canners at the retail level. Accordingly, cooperative canners are forced to sell their products at prices substantially below commercial canners. At the same time, because of the natural desire of professional management to make a profit, cooperative canners have a direct interest in maintaining the cost of their raw materials -- tomatoes -- at a sufficiently low level to survive. A grower for a cooperative canner, being subject to such conflicting interests, cannot effectively serve on a marketing or bargaining committee of an association.

Section 13(a). It is suggested that the preamble be amended by the following, emphasized language:

> SEC. 13. (a) Except as provided in paragraph (b) of this section, any person may commence a civil action on his own behalf, any producer may commence a civil action as the representative of a class of which he is a member, and any association may commence a civil action on behalf of its members or subject to the class action provisions of the Federal Rules of Civil Procedure -- ....

The reason for the proposed amendatory language, as indicated above, is that tomato growers, being typical of producers for whose benefit H.R. 3535 is to be enacted, are afraid to exercise their rights under fair agricultural practices acts. As H.R. 3535 presently reads, class actions are apparently not authorized under its provisions, even though the Federal Rules of Civil Procedure permit such actions. Furthermore, while "person" is defined in section 3(b) of the bill as including "associations", initiation of a civil action by an association for the protection of its producer-members would be for *their* benefit, *not* for the benefit of the assocation. To further efficient and economical judicial administration, and to provide producers and associations with sorely needed protections, any legislation ought to include the option of representative class actions to be brought by associations or by producers.

I appreciate the opportunity for being allowed to submit the foregoing position. If your Subcommittee would find it helpful, I would be willing to appear in Washington, D.C. to testify personally. Alternatively, I would appreciate if my position could be made a part of the record with respect to H.R. 3535.

While much of the information obtained through discovery proceedings in the Eastern District of California is and remains subject to a protective order entered in that court, some of this information has become public through open court proceedings. In addition, certain of that information, without my assistance or the assistance of my counsel, has come to the attention of an investigative reporter for *New West* magazine. For your information, and for the information of other members of your Subcommittee, I attached hereto, and make a part hereof, copies of:

Honorable Frederick W. Richmond
July 17, 1979
Page Six

(a) Ehud Yonay, "You Say Tomato, I Say Conspiracy", New West, September 25, 1978, at pp. 77 et seq.; and

(b) Ehud Yonay, "Tomato Reprise", New West, July 30, 1979, at p. 64.

Sincerely,

Domenic L. Enrico

Domenic L. Enrico

Attachments

cc: ✓Honorable Thomas S. Foley (w/attach.)
Chairman, Committee on Agriculture
United States House of Representatives

Honorable Leon E. Panetta (w/attach.)
Representative, 16th California Congressional District
United States House of Representatives

Honorable Tony Coelho (w/attach.)
Representative, 15th California Congressional District
United States House of Representatives

(The attachments referred to are held in the subcommittee file.)

INDEPENDENT CLING PEACH PRODUCERS BARGAINING GROUP

950-D OAKDALE ROAD • MODESTO, CALIFORNIA 95355 209/527-1820

RECEIVED
1979 JUL [illegible] 02
OFFICE OF
[illegible] THOMAS S. FOLEY

July 27, 1979

The Honorable Frederick W. Richmond
Chairman, Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition.
House Committee on Agricultural
1301 L.H.O.B.
Washington, D.C. 20515

Dear Representitive Richmond:

We have only recently become aware of the proposed provisions of H.R.3535 and wish to voice opposition to this bill. We respectfully request that this letter become a part of the hearing record regarding this measure.

For all practical purposes, 100% of cling peaches are grown and processed within the State of California. Today, approximately one half of the cling peach tonnage is canned and then sold by grower owned cooperative canners. Except for their affects upon the selling price of the canned product, these cooperative canners do not directly take part in negotiations for the commercial price to be paid the independent, non co-op grower, for his raw fruit. It is the independent grower, dealing with independent processors, who sets the market price for our product. Membership in a Bargaining Association should therefore be restricted to independent growers who do not own a share in canning and marketing facilities.

For many years there was only one organization formally representing peach growers. Although a majority of its members were members of co-op processors it presumed to set a peach price for all growers in the State-whether a grower liked it or not. By contractual arrangements with processors, an independent grower who was not a member of that association, was denied the opportunity to effectively bargain for a price for his own product. Although such a grower was frozen to the association price, he did not necessarily receive other benefits accorded association members.

Dissatisfaction with pricing and other practices led to formation of our organization in 1973. It became necessary for us to file a lawsuit in Federal Court against the other association and five major independent processors in order to establish our right to bargain on behalf of our members and to receive equal treatment from processors. We do not wish our rights to join together for proper representation to be endangered by this legislation, no matter how well intended it might be.

H.R.3535 causes us a number of concerns but for purposes of brevity we will understate those concerns and limit further discussion to the following:

Accredidation- We are wary of this provision and concerned with the denial of the right of an individual to be represented by someone of his own choosing-including representing himself-in selling and bargaining for his product. The mere size of an organization may lead to its being accredited but an individual grower may have no confidence in the management of that association and not wish to join. It is unthinkable that he should then be bound by a price arrived at by others not of his own choosing. He would not even be a party to compulsary arbitration proceedings since those processes would be limited to the processor, the accredited association, and the designee of the Secretary of Agricultural. If more than one association were accredited to deal with the same product and with the same handlers, compulsary arbitration proceedings could be snarled with differing claims and approaches to value-yet it is difficult to imagine a law creating a bargaining monopoly for only one accredited association.

In addition, there is the practical difficulties of forming a bonafide bargaining association supported by members dues, if such an organization is subjected to the possibility of not being accredited, and therefore not able to bargain on behalf of its members.

Unfair Practices- Section 4(a) sets forth unfair practices that a handler shall not engage in. There is a very serious omission in this section which we believe should be corrected. It is vital to add a provision that forbids a handler from financially supporting a bargaining association. This support is sometimes clothed in words such as "Service Fees" and represents a direct conflict of interest. A bargaining association should be supported only by its members through the payment of dues. It's service should be to its members. An association can not properly bargain if the bulk of its operating expenses are furnished by the very people with whom it is presumably bargaining. The amount of this "Service Fee" becomes a separate and important issue to the staff of the bargaining association and can lead to unnecessary conpromises regarding the actual price the grower receives for his product.

This proposed legislation has some inviting aspects. However, we are firmly convinced that the present system within which we operate is still superior to that proposed by H.R.3535. Farmers are already beset with mounting regulation and control. Their best interests will not be served by further restraints upon their ability to deal with market conditions as they themselves perceive them to be.

We ask that this bill be defeated.

Very truly yours,

INDEPENDENT CLING PEACH PRODUCERS
BARGAINING GROUP

Allen Odell

Allen Odell
General Manager

AO/jr
cc: Honorable Thomas S. Foley
Honorable Leon E. Panetta

FOR THE RECORD

POSITION PAPER OF
THE BOARD OF TRADE OF KANSAS CITY, MISSOURI, INC.

BEFORE THE
DOMESTIC MARKETING AND CONSUMER RELATIONS SUBCOMMITTEE
OF THE
AGRICULTURE COMMITTEE OF THE UNITED STATES HOUSE OF REPRESENTATIVES
IN OPPOSITION TO H.R. 3535
"THE NATIONAL AGRICULTURAL BARGAINING ACT OF 1979"
(In lieu of oral testimony at the hearing of July 10, 1979)

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1. This position paper is submitted in behalf of The Board of Trade of Kansas City, Missouri, Inc. (KCBOT), a membership organization fairly well representing all segments of the U.S. grain industry. For identification, the KCBOT is a cash grain and designated wheat futures contract market. This latter activity is under the regulatory authority of the Commodity Futures Trading Commission. It is the largest hard winter wheat market in the world. For instance, 1978 receipts and shipments of all grains were 216,838,217 and 126,715,848 bushels, respectively. The 1978 total wheat futures trading volume was 3,779,745,000 bushels--a figure sure to be exceeded in 1979 based upon record trading volume for the first half of the year.

2. The 214 members of the KCBOT are persons who represent farmer-owned grain marketing cooperatives, elevator operators (country, subterminal, and terminal), processors, millers, wholesale bakers, exporters, brokers (cash and futures), merchandisers (cash and futures), and others.

3. The position herein taken is similar to the position of the KCBOT in 1972, in opposition to the Sisk bill, a forerunner of this bill. The major differences are that this bill is even more

objectionable to the grain trade as will be more fully developed herein, and in so far as grains, the reasons for are much weaker.

4. The KCBOT's strong opposition to H.R. 3535 is best summarized by the statement that we do not believe the so-called bargaining as provided in the bill could possibly work with the grain and soybean industry, would create havoc, and would be against the long-range best interests of producers and consumers, as well as the grain industry.

5. Our objection is, however, only directed at the bill because it includes wheat and grains (including soybeans). In our view, such a system as called for by H.R. 3535 would at the least radically change the way grains are marketed, if not totally destroy a system developed over 100 years ago. Thus we go to great lengths to show its harm to grain marketing. We have no strong objection to a bill limited to bargaining for specialty crops, and specifically excluding grains.

6. The grain marketing system was not created by an Act of Congress, but rather grew in response to the many varied conditions and needs of a burgeoning grain oriented economy in the rich heartland of America, which produces, merchandises, and transports many types, varieties, and grades of grain for a multitude of needs here and abroad. It is a complex system that is sometimes not well understood. Much of the activity is centered at three major grain exchanges--the Chicago Board of Trade, Kansas City Board of Trade, and the Minneapolis Grain Exchange, although many of the day-to-day

operations receive much less attention and are far less dramatic.

7. It is widely known that this country is exporting half or more of its wheat crop, its soybeans, its rice, and a significant amount of its feed grains. We are sure you are aware that agricultural exports are estimated by the Foreign Agricultural Service of the United States Department of Agriculture for this fiscal year to reach a record of $32 billion, with all but a billion or so representing commercial dollar sales. By contrast, in 1972--the date of the hearings on the earlier version of this bill,the export figure was only $7.8 billion. It's fairly obvious that the system must be doing something right. Agriculture and agribusiness have thus contributed many billions of dollars to our commercial trade balance which helps offset the cost of imported petroleum--a mounting problem accentuated by the Camp David crisis that is still going on at the time this paper is being developed. We do not believe there was ever a time when the nation's economy needed agricultural trade more than it does today.

8. In addition, farmers would be in an especially catastrophic position without the export trade. In most years this country must compete with other nations' producers on practically every agricultural product, and our competitive position is based primarily on price and service. U.S. farmers as a group are the most successful, efficient, and productive in the world, but to saddle them with an inflexible system of forced prices strikes us as not only shortsighted but foolish beyond belief. It is particularly ironic that you

would even be considering such a bill for wheat and feed grains (including soybeans) when such are at the highest price levels for several years and still going up as a group. It is beyond our comprehension how U.S. farmers could"bargain" on the price of commodities which are to be resold overseas in competitive markets--that is, beyond what they are already doing voluntarily but successfully under the concept of "orderly marketing."* The customers are beyond our control, and more importantly, can live without our exports, which,after all, comprise but 10% of the world's total foodstuffs.

9. We don't see how forced bargaining could be applied effectively to crops where both supply and demand vary so rapidly year to year and moment to moment--where crops are harvested within a matter of a few weeks, yet must be stored often for a year or more, and then transported not only across the country but across the world and perhaps processed, baked, fed into swine, poultry or beef, and then consumed.

10. Bear in mind that these commodities are owned and financed by somebody as soon as they are planted until they are ultimately consumed, whether they are in the fields, in a farm bin, in a local elevator, on board a ship, or in a processing plant. Rapid price changes affect every type of grain ownership. The financing of much of the ownership of these vast amounts of grain is made possible because of the risk management system of hedging through the

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*This practice will be further discussed later herein.

futures mechanism provided by the marketing system in the major grain futures markets in America. Those who own grain (including the country elevators) are in many instances able to obtain financing from banks only because, often at the bank's insistence, they have hedged, or obtained price protection in the grain futures markets of Kansas City, Chicago, and Minneapolis. Without such protection the processors and other handlers would be forced to take a much higher protection or margin and would pay the farmers less in order to protect themselves from downward price changes. There is a real question about the ability of all in the trade to finance the billions of dollars necessary to use to own the grain without the hedging protection afforded through the futures markets.

11. We have assumed as we studied the bill under consideration that country elevators would be "handlers." At least they would be the first handlers who would be involved in any bargaining process. On the other hand, the country elevator must merchandise its inventory to various buyers--terminal elevators, flour mills, processors, exporters, and even individual farmers who raise chickens, cattle, hogs, and dairy cattle. They have different needs at different times. We don't see in the bill any price protection for the country elevator once it has been forced to pay a certain "bargain" price. Country elevators get their income through the storing and handling of grain almost, you might say, on a fee basis--that is, they have a very low profit margin per bushel of grain handled. They are not cash or futures speculators.

This leads to the major defect, in our view, in the bill. We do not understand how a country elevator or any handler can be forced to buy something at a "bargained" price which it has no assurance of selling, since the bill does not control the ultimate user, be it a housewife shopping for bread, a chicken farmer, an exporter, a miller in Sierra Leone or whatever.

12. A second major criticism we have with the bill is the total lack of freedom, which we find inimicable to the American tradition and economic system as a whole. For instance, in the labor sector of the economy under the National Labor Relations Act, the parties do not face the threat of binding arbitration by third parties, nor is the employer/buyer totally locked in to a negotiated price. Under labor laws an employer can always, for economic purposes, refuse to pay for those particular employees and seek others (of course, at the risk of a possible strike). Although we're not an advocate of such drastic measures, we do not see any such freedom for a handler in H.R. 3535. Thus we do not feel "bargaining" is the proper term. Perhaps "forced bargaining" would be more reflective of the bill's apparent intent.

13. The sponsors of the bill apparently incorrectly assume, and some have indicated as much in reported speeches, that farmers are "at the mercy" of large corporate buyers who set the prices--low ones at that. This is not true with the grain industry (regardless of what may be the situation with specialty crops). Therefore

in our view, since one of the basic premises of the bill's sponsors is not valid, the assumed need for the bill falls.

(a) One example is that with corn, grain sorghum to a lesser extent, and indirectly, soybeans, the buyer is a local operation--often other farmers, who feed grains to chickens, hogs, and cattle to supply the nation's needs of animal protein (meat, eggs, cheese, milk). In many cases such local producers may be a close neighbor of the producers of the grain. In other instances they are indirect buyers. This raises several unanswered basic questions. Is a single chicken raiser a handler? Is a sale between one farmer/producer to another farmer/user who may be his neighbor and customer for many years foreclosed notwithstanding their mutual desire if all the other producers in the area have opted for an association? How can this possibly be enforced? This could turn neighbor against neighbor.

(b) More important is the system of "orderly marketing" referred to earlier, voluntarily being followed by many grain producers throughout the Midwest. Many grain producers now have some form of on-farm storage available. Some of this is very sophisticated and farmers are very expert in its use in terms of storage, treatment for infestation, measures for heating problems, etc. Many of these on-farm storage plants have been financed by existing federal credit loan programs. There are approximately 10 billion bushels of such on-farm storage now available for the 1979 grain harvest--a vast change in conditions from those which existed in 1972. Because of this ability to hold grain at the farm, the producers are not forced to sell at harvesttime. This partially avoids the automatic harvesttime deep price depression common for many, many earlier years. It often also means that producers simply will not sell at the current prices unless local elevators will increase the price--perhaps by a dime or 25¢ a bushel. Such premiums are not at all uncommon in days when ships are arriving at Houston and New Orleans which exporters must fill in order to meet their contractual obligations with demurrage costs of $5,000 or more a day. Moreover, under some programs farmers are paid to store grain in their own bins under loan programs. Ironically, we have been told that some farmers are now in a position where they do not wish to sell any more grain in 1979 because they have just sold their 1977 or 1978 crops and they don't want to pay any more taxes! Such farmers are scarcely at the mercy of the buyers.*

(c) The significant increase in on-farm storage is a major development or change in conditions from the 1971-1972 era when the so-called farm bargaining concept was first before the committee. It was rejected at that time for good and sufficient reasons, and we maintain that the reasons are much more compelling today for such a similar action by this committee.

14. Because the bill has so many basic flaws, we do not here attempt a detailed section-by-section analysis, but some provisions strike us as particularly bad. For example, in Sec. 5b it provides:

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*See the attached article on one farm's storage facility that has capacity for 140,000 bushels from the High Plains Journal.

> "If a handler purchases a product from other producers under terms more favorable to such producers than the terms negotiated with an accredited association for such product, he shall offer the same terms to the accredited association."

Let's assume a buyer (merchandiser, miller, elevator or exporter for wheat) has finally arrived at a price with a qualified bargaining association. With this price the exporter is buying and shipping wheat. Suddenly something happens in Europe or Asia to boost the demand, and the world price jumps as has been the case this year. If the exporter has to pay more to a subsequent supplier, does the bill mean he would have to pay the same price to the first association even though that sale was complete? If so,this means (i) he will go broke if he must; or (ii) he would not be able to make the subsequent sale. Or does it simply mean the handler must offer to make subsequent purchases from the first association at the same price? That would be meaningless if they are out of grain.

15. Another area where complications would arise is in the sale of by-products, which in many instances are almost as important as the main products themselves. For example, the animal feeding business is tremendously efficient, and it uses every bit of every kernel of grain--even the elevator dust. Examples of key by-products include gluten, feeds from corn, brewers'dried grains, distillers dried grains, wheat mill by-products such as bran, shorts and middlings (so-called millfeeds), rice bran, hominy, feed, and many others. These are all priced according to supply and demand. Feed manufacturers rely upon computers to tell them which of the many ingredients available are the most efficient based upon the relative

price and nutrition content on any given day for use in rations being prepared. In this manner the feed grain operators are able to keep the prices as low as possible for the customers-producers, which in the long run benefits consumers. The prices are mutually related in that the price received for the by-product is in part determined by the price of the main item, say flour, in the case of wheat, and vice versa. We point out the interrelationship of these prices to spotlight the difficulties which would be faced by a fixed price through bargaining at some point in the process. Such a fixed price could easily restrict or eliminate the use of its by-products in a particular feed situation, and we suggest this is another example of how fluctuating prices are built into the total grain marketing system.

16. One feature of H.R. 3535 which we feel particularly odorous is the mandatory bargaining requirement coupled with binding arbitration. We have many questions about how this would work unanswered by the bill, which would have to be covered by numerous regulations. However, the basic question is: "Do producers want third persons, who may well represent consumer interests, setting the price of their hard-produced commodities?"

17. Other practical questions arise, such as time--for how long is a "bargained for" price mandatory? Until the handler's customer's offer is dropped? A crop year? Some time in between? What if the grade changes, due to deterioration? What if it grades higher? Does the system anticipate that if a handler is offered a higher price than anticipated, he gets to keep the increase?

18. What about the grade and scale system--how will it be adapted to the bargaining situation? For example, wheat is generally priced on a protein scale, the higher protein being higher value. But different fields, even adjacent ones, can produce different protein levels. How is this taken into account? Must handlers pay the same price regardless of protein and other grading factors? If so, one producer will gain and another will lose. What about different moisture levels, different foreign material count, different broken kernel count, DHV factors in wheat, garlicky wheat, etc.? How will such minute but critical differences be handled in the new system?

19. As we analyze the bill, we assume the objective is to force higher farm prices. This would necessarily require some control over production and certainly control over surplus. The current farm program and similar programs we have had over several years bring government authority and financing and even price supports into play in regulating production and putting a floor under prices. They also work to set a ceiling to a certain extent with the loan release target levels. But basically as it currently stands, if a farmer doesn't want to sell his grain or soybeans at harvest, he can put it under the loan program. If the price goes up later, he can redeem his loan and sell at the higher price. If it goes way up, there is a forced redemption. In effect, the government provides a price floor and becomes responsible for the surplus, if any. In addition, under certain conditions, there are supplemental income payments.

20. Are we therefore to assume that the bargaining plan will supplant this system? If so, do we assume the obligation for supply control, handling of surpluses, financing, and all other parts of the current system would become the obligation of the farmers and perhaps the bargaining associations? We would be extremely skeptical about the taxpayers' willingness to continue direct payments to farmers or even basic loan programs if the farmer should have available a compulsory bargaining system.

21. Handlers are middlemen. The ultimate customers are not required to pay higher prices, so what is the middleman to do? How can we force other countries to pay what they cannot or are unwilling to pay? Or take the dairyman--milk prices are set by marketing orders. Yet he or his feed dealer must pay the so-called bargained price. How is he to be protected?

22. Since the obvious intended effect is higher prices to producers, the bill will obviously have a heavy inflationary impact on the consumers of America and the world. It should be noted that since one farmer produces enough foodstuff for 52 other persons, his political clout is certainly not on a par with the producers in our current political setting. It indeed seems strange to see such an inflationary bill in times such as these, and when this is made known, we would be very amazed if the full House would pass the bill; or if it passed, if it would escape a veto. Price bargaining goes on every single day on every single level. Grain merchants haggle over one-quarter or one-half cent per bushel. If the buyer can pay more, the good seller will get it. The attempt to get more is

called "testing," and this goes on constantly. It occurs in public view in futures pits, and between cash traders. Thus in a very real sense the consumer's demand meets the producer's supply through the marketing process on a daily basis literally hundreds of thousands of times a day. The resulting price is a compromise on both sides. Excess supply usually results in a lower price than the seller desires, just as strong buy pressure may force a higher price than the buyer wishes.

23. The KCBOT is somewhat reluctant to oppose a bill which is said to have some farm support. The KCBOT is not opposed to voluntary bargaining in any way, nor is it opposed _per se_ to high farm prices. In fact, most grain firms enjoy greater financial rewards during times of higher prices than during times of lower prices. We must, however, oppose bills which we believe are against the long-range best interests of all--grain producers and users, as well as "handlers."

24. One danger in the grain business would come in delays and clumsy situations that would develop if bargaining at a country elevator, for instance, had to occur prior to a sale, say at harvesttime, when loaded trucks are flowing in from the fields. With the bargaining process, selection of an agent or association, possible arbitration, even binding arbitration, we do not see how the system can have much flexibility or operate fast.

25. Suppose a foreign buyer wants to buy a cargo, say a million bushels of ordinary No. 2 hard winter wheat, for shipment in 60

days--a very ordinary transaction.* Currently the exporter who doesn't own the grain will price the wheat relative to prevailing futures at the time delivery is promised. Then if he gets the business--and this will generally depend upon whether his price is competitive in the world market--he will buy futures to cover his commitment. Subsequently he will buy wheat from country elevators directly or indirectly, and arrange for shipments to the Gulf to meet the boat. As he buys the wheat, he will sell back his grain futures contracts. In this manner he has been hedged from price risk. In other words, he has given up an opportunity for large profits in return for price protection in the event of a drop in price. Further, he is able to offer an importer on fairly short notice a fixed price for future shipment. This benefits both buyers and sellers, and it's difficult to imagine how this could occur without the futures system. For instance, if the price was fixed by forced bargaining, he might not get the sale at all. These types of situations are even more complicated if there are several foreign buyers who wish to buy varying qualities of wheat. Perhaps one purchase would include so many bushels of ordinary low protein from Oklahoma, Kansas, and Nebraska; some 12% protein wheat from the same area; 13 to 13.9% protein wheat and possibly even higher from the spring wheat areas in the northern part of the wheat producing area.

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*For example, in the week of July 2, 1979, the U.S. exported 83 million bushels of all grains.

Or an exporter may be trying to fill a ship with corn from Iowa, milo from Texas, and soybeans from Missouri for shipment to a small nation. It is difficult to see how a deal could rapidly be put together if the bargaining process had to occur at this point.

In all situations the exporter can take the grain's price risk because of the futures market.

26. Many of the processors in the food chain operate facilities on a regular daily basis. Of course, the output fluctuates with supply/demand, but for the most part they try to average a fairly constant flowthrough. They have to be assured of a steady supply at known prices which might not necessarily be the case if the process were interrupted by lengthy bargaining procedures over the price. Further, in order to satisfy the many demands of customers, food processors and millers must be ready to purchase and supply many different kinds of grains to satisfy their customers' needs and desires. For instance, to produce flour for wholesale bakers, they may buy spring wheat from North Dakota and Minnesota to blend with ordinary protein wheat from Kansas and lower protein wheat from Texas and Oklahoma. The miller has to rapidly adjust to diverse needs and availabilities and protein levels of different wheats. This would be difficult if the process is interrupted by bargaining difficulties.

27. The problem of the soybean processors is particularly acute since the major components of the bean--soybean oil and soybean meal--go to different users at different price structures which are

neither particularly related to each other or the producer. For instance, meal can be replaced with cottonseed meal, fish meal, in some situations, and is used to enhance corn for livestock feed. Soybean oil is competitive with olive oil, sunflower oil, corn oil, safflower oil, cottonseed oil, etc., under a variety of sets of circumstances and conditions. A forced bargained price for soybeans would put the processor in a very difficult position vis-a-vis his customers.

28. (a) Another major change or development since the 1972 era may be called the "information" explosion. Since the famous sales to Russia and China in the 1972-74 era, U.S. grain producers have become much more conscious of the worldwide as well as local news which affects grain marketing and the values and prices of their grains. For example, the Russian word "sukhovey" for the hot, dry wind so devastating to wheat produced this year is becoming as familiar a term to wheat growers as the Rocky Mountain expression, "a chinook wind."

(b) Farmers study the marketing system and decide when to sell or not to sell with much more sophisticated and informed judgment than was formerly the case. Agricultural colleges, such as Kansas State University and the University of Missouri, report heavy interest in courses in grain marketing. Several days a week the visitors' balcony at the KCBOT is filled with farmers seeking a deeper understanding of the wheat marketing system. The KCBOT movie is in constant use by groups in many states for the same reason. The United

States Department of Agriculture and the various farm states and their agriculture extension programs are constantly updating farmers on marketing techniques, skills, sources of information, etc.

(c) The U.S.D.A. itself now puts out more and better information. One example, made, we believe, following the suggestion of Roderick Turnbull, Director of Public Affairs for the KCBOT, is the daily status report of wheat prices in relation to the mandatory average $4.11 price where wheat under loan must be redeemed.

(d) New magazines, such as FarmFutures and Commodities, instruct the best marketing strategies, as do numerous other advisory services and letters.

(e) Up-to-the-minute market reports heard over AM radios and tractor cabs, coupled with "CB's," permit immediate producer response to current market information.

(f) In addition, many local trade associations and other publications are constantly alerting farmers to marketing possibilities and situations. If there is an uninformed producer, it would almost have to be one with poor eyesight or hearing!

29. We would point out that under the present competitive conditions existing in the grain industry, many times the grain operator will handle a $5,000 car of grain for as low as $50 or less. It is difficult to see how a bargaining agency can handle grain as cheaply and as efficiently and return as much or more to the farmer.

30. We fear other features of the bill. Producer freedom would be eliminated. A new government bureaucracy or agency would be set

up within a Department of Agriculture. New persons would have to be trained and located to be arbitrators, and standards would have to be developed for their guidance. Questions about when binding arbitration would apply have to be answered. Would the arbitrators represent producers or consumers? What would be the appropriate size of the bargaining group? Section? County? State? Area? Would a handler be able to appeal a decision he found was unfair to the courts? Is anyone responsible if the handler loses sales because of a fixed commitment price?

31. It is our conclusion that the real world is simply not the simple place the sponsors of this bill assume that it is. In the real day-to-day world of many intertwining complexing pricing factors and conditions, simple solutions simply will not work.

32. In closing, we wish to thank you for the opportunity to present our views on this important subject. To summarize, while the KCBOT would not favor in principle a farm bargaining bill which excluded grains, including soybeans, such a revised bill, however, would certainly not draw active opposition from this segment of the grain industry.

Mr. Chairman and members of the committee, we hope that our presentation has been informative and pertinent to questions you may have on the bill under consideration. If we may supply additional information, please contact us.

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For further information, contact:
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OR
W. N. Vernon III, Executive Vice President
The Board of Trade of Kansas City, Missouri, Inc.
4800 Main Street, Suite 274
Kansas City MO 64112
(816) 753-7363

Farmer prefers on-farm storage

By Doug Rich

Grain bins are being built in the High Plains at an ever-increasing rate. Since storage rates have gone up and grain prices have gone down during the past few years farmers have turned to storing their own grain in an attempt to make a profit. Grain producers do not have to sell at harvest time if they have on-farm storage.

Albert Reeh of Rawlins County, ~~Kans.~~, has added a new grain storage and handling system to his farm. The new system will give him more storage space and make it easier for him to keep the grain in condition. Reeh farms 2,700 acres, half in dryland wheat and half in summer fallow. There is some grass which he rents out each year. He does not run any livestock. His storage facilities consist of eight 20,000 bushel capacity bins and a 60 by 144 foot round top building. Along with this he has installed a modern elevator leg and scales for weighing trucks in and out.

Reeh has the ability to load out 1,000 bushels in nine minutes from his overhead bin and his leg can move 3,000 bushels an hour. His old system included four bins and an elevator but did not have the capacity of the new set-up. The old set up had a total capacity of 50,000 bushels. "We were hauling some to town at that time," Reeh added.

In 1976 Reeh stored his first crop in the new bins. Part of that 1976 crop is still stored in the roundtop building. Crops from 1978 and 1977 are being held in the farmer owned reserve. Before he added to his storage facilities Reeh would store the present years's crop until the following June when he would move it out before harvesting the new crop. Now that the farmer held reserve has been released Reeh says he will be selling some, but he added that there were no cars available to haul the grain right now.

Two of the major reasons for Reeh adding the updated facilities were his son and the market. His son, Bob, a senior majoring in agricultural business at Kansas State University, plans to return to the farm after he graduates. Reeh also says the storage gives him a hedge against the market price of wheat. "You don't have to sell at harvest time any more," he pointed out. The new facilities also save on storage charges.

Reeh has room for this year's harvest on his farm. He has 140,000 bushels of grain stored on his farm that he just finished moving to new bins last week. This included 100,000 bushels of wheat and 40,000 of milo. "All of it is in top condition," he said. Keeping the grain in top condition is what makes farm storage successful. With the elevator Reeh said it is easy to move the grain around and keep it in top condition. "We could not find any bugs in the grain," he added.

All of the grain is treated with powdered malathion as it goes into the leg of the elevator. Reeh has an automatic metering device that puts on a regulated amount of the chemical as it is being put into the leg. He only treats the grain once. Aerating the grain is also important. Reeh aerates the grain for several days after harvest. He usually aerates for five to seven days in the spring. "This keeps the grain from going through a sweat," he explained. He aerates again in the winter for five to seven days after the temperature reaches 10 to 20 degrees. Bugs don't work in anything below 60 degrees he said.

"Anything over 5,000 bushels should be aerated," according to Reeh. Reeh has three aerators on each bin and likes to keep stored grain under 12.5% moisture content. "We have been pretty lucky the last three years," Reeh said. "We started at 12% moisture and it went on down from there. If it rains at harvest you just sit and wait until it is right again."

Reeh likes to harvest milo below 14% moisture if he is going to store it. "We were lucky on the last milo crop," he said. If the milo is over 14% moisture they take it to town, "because they are going to move it right away."

Reeh said he hopes to begin harvest this year between July 4 and 10. Rawlins County, like most places in the High Plains, is about a week to ten days behind normal this year. So far there has been no problem with greenbugs but there are a lot of grasshoppers. With the except of 1977 when he was hailed out, Reeh has hired the same custom cutter for the past 15 years to cut his wheat. He cuts his own milo. With the ample moisture supply he has this year Reeh expects an average yield of around 40 bushels to the acre. "Most of the fields are pretty clean," he added.

Even though Reeh takes every precaution possible to keep his grain in top condition he keeps one are up his sleeve just in case the unforeseen should occur. "I always leave one bin open in case I have to move the grain. I have too much to load out on farm trucks."

SECTION B

THE HIGH PLAINS JOURNAL

The Farmer's Paper

★ ★ —July 9, 1979

LMA

Livestock Marketing Association

4900 OAK STREET • KANSAS CITY, MISSOURI 64112 • 816-531-2235

July 13, 1979

Congressman Frederick W. Richmond, Chairman
Subcommittee on Domestic Marketing, Consumer Relations, & Nutrition
1302 Longworth House Office Building
Washington, D.C. 20515

Re: National Agriculture Bargaining Act of 1979
(H.R. 3535) Hearings, July 10th & 11th, 1979

Dear Congressman Richmond:

On behalf of over fourteen hundred (1,400) subscribing businesses of Livestock Marketing Association, I hereby express positive objection to the National Agriculture Bargaining Act of 1979, (H.R. 3535).

Our Trade Group is comprised of livestock markets, livestock dealers, and livestock brokers situated throughout the United States and Canada. (To appreciate the dimensions of the marketing sector of the livestock industry, please consider the attached volume and transaction figures).

It is the position of our subscribers that H.R. 3535 structures the most damaging kind of legislation with respect to marketing in agriculture. It is devisive to agricultural interests and is in direct contrast to our continued support of "Freedom in Livestock Marketing".

The legislation would repose in the Secretary of Agriculture unbridled power to engage in mediation and arbitration in relation to collective bargaining procedures applied in the merchandising of agriculture products.

It has been suggested that this legislation could be modified by excluding certain agricultural products such as livestock. This is not acceptable either, as a matter of practical recognition of the close relationship of various segments of the agricultural industry and economy.

For example, if the bill would encompass only fruits and vegetables, or certain feed grains, it must be remembered that many feedlots feed orange poke, potatoes, and, of course, feed grains of all sorts. It would be terribly unfair to leverage one segment of the food production process against another.

Livestock Marketing Association has in each session of Congress for the past few years, supported "Freedom in Livestock Marketing" legislation. This legislation is directly contrary to the National Agriculture Bargaining Act and I invite your attention to the bill which was introduced in the United States Senate last year.

The "Freedom in Livestock Marketing Act" embodies five freedoms which are fundamental to a free market system based upon the competitive determination of prices, which has worked so very well in this country for so very long.

These five freedoms are: freedom of enterprise, freedom of competition, freedom of choice, freedom of product and freedom of risk. This legislation does not provide for socialized marketing as does the National Agriculture Bargaining Act and it does not make the Secretary of Agriculture an obligatory partner in merchandising transactions throughout the entire agricultural industry. It ensures the exact opposite.

Livestock Marketing Association therefore respectfully requests that this Subcommittee flatly reject the National Agriculture Bargaining Act of 1979. Agriculture simply cannot afford the devisiveness which this bill creates, the costs which it generates and the burden which it imposes.

I would very much appreciate it if the entire contents of this letter/statement, together with attachments, would be included as a part of the record of this hearing.

Thank you.

Very truly yours,

Robert M. Cook/rl

Robert M. Cook
Executive Counsel

RMC/rl
Attachment

(The attachment is held in the subcommittee file.)

MIDCONTINENT FARMERS ASSOCIATION

COLUMBIA, MISSOURI

OFFICE OF THE PRESIDENT

July 9, 1979

House Agriculture Committee
Suite 1301
Longworth House Office Building
Washington, D.C. 20515

UL 1 6 A.M.

Attention: Frederick W. Richmond, Chairman
Subcommittee on Domestic Marketing,
Consumer Relations, and Nutrition

Dear Mr. Chairman:

Due to insufficient time since receiving notification of hearings on H.R. 3535, we were unable to prepare testimony to be presented before your committee. However, we wish to express opposition to the proposed National Agricultural Bargaining Act of 1979. We would appreciate your making our comments a part of the record.

Section 2 of the Bill states that handlers should not interfere with the rights of farmers to organize cooperatives, and that they should bargain in good faith with cooperatives. Such a statement would cause one to assume that the bill is directed toward undersirable practices of handlers.

To a limited degree this is true, but the real thrust of the proposed legislation is directed against associations. For example, standards are established for associations which seek accreditation to bargain for their members. No such standards are imposed upon handlers. To illustrate, associations must show they represent enough producers to function as an effective agent for producers. Handlers are not required to demonstrate that they have access to large enough markets to be effective.

As part of the accreditation process, an association must designate the handlers with whom it wishes to bargain, and then must bargain in good faith with those designated handlers.

Frederick W. Richmond, Chairman
July 9, 1979
Page 2

We oppose the accreditation process and the resulting restrictions it would impose upon cooperatives. We are already bargaining livestock and grain for our member-patrons under provisions of the Capper-Volstead Act of 1922. Through the joint marketings of our members' produce, we are able to secure higher prices for our members than would be the case if each farmer marketed his produce individually. This we are able to do without the proposed burdensome government supervision and regulations.

To impose the additional bureaucracy required by the necessary investigators, hearings, reports and judicial activities by USDA to enforce the act would be costly and time consuming.

Although the proposed legislation permits, rather than mandates, cooperatives to seek accreditation to bargain for its members, the results would be that cooperatives would have no alternative but to seek accreditation. Existing cooperatives with long established relationships with handlers would be required immediately to seek accreditation of bargaining with them, or face the consequences of having competing associations which have become certified taking markets from them. Uncertified cooperatives would soon find themselves locked out of the marketing system.

It is our belief that the proposed legislation would result in a proliferation of cooperatives because associations organized as certified bargaining agents could not otherwise be exempt from anti-trust laws. This proliferation of cooperatives would shift all of the bargaining power to the handlers and make a mockery of the intent of H.R. 3535 as set out in Section 2 of the Bill.

Our greatest concern with H.R. 3535 is that it would grant too much power to the Secretary of Agriculture to determine who is to be accredited as a bargaining association. He would, by necessity, make too many subjective findings. Taken to the logical conclusion, under mediation and arbitration powers proposed in Section 8 of the Bill, the Secretary could establish prices of every commodity by requiring compulsory and binding arbitration.

In summary, the legislation seems biased in favor of handlers, much "red tape" is imposed upon both handlers and associations, and too much arbitrary and subjective power would be granted to the Secretary of Agriculture. It is difficult to see how this legislation benefits those producers who now market their produce through already existing sound and viable cooperatives.

Sincerely,

F V Heinkel

F. V. Heinkel
President

NATIONAL CATTLEMEN'S ASSOCIATION
P.O. Box 569 • 1001 Lincoln Street • Denver, Colorado 80201 • 303-861-1904

OFFICE OF THE PRESIDENT

July 9, 1979

The Honorable Fred Richmond, Chairman
Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition
House Committee on Agriculture
1301 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Richmond:

The National Cattlemen's Association (NCA) favors an orderly, open marketing of agricultural commodities and recognizes that for some commodities, group action is desirable and sometimes necessary to bargain effectively for fair prices. It is our opinion that the proposed legislation primarily is directed toward fruit and vegtable commodities which have a history of organizing into bargaining associations with a policy of forward contracting. Under these conditions, the proposed legislation may promote bargaining in good faith between these handlers and associations. However, the beef cattle industry is a nationally produced commodity, and with its unique methods of marketing, in no way resembles the industries for which this bill apparently is intended.

Cattlemen are inherently independent, with organized group bargaining more the exception than the rule. As previously stated, our industry is national in scope with cattle being produced in every state...to a larger or lesser extent in some locales. It is not uncommon for calves being produced in one state to travel to several states, during the stages of feeding and processing, before reaching the consumer...in some cases the product may travel from coast to coast. Under these circumstances, sections in the proposed legislation concerning accreditation and identification of handlers are impractical and undesirable to our industry.

It is not clear what the proposed legislation would accomplish over the existing laws allowing organized group action. The Capper-Volstead Act has served well the cooperative efforts of cattlemen. The proposed legislation is largely analogous to the Agricultural Fair Practices Act of 1967 and proposed changes are not substantive enough to warrant new legislation.

Serving The Nation's Beef Cattle Industry

The proposed legislation overly ensures the protection of the producer involved in an association, but does little, if anything, to protect the individual producers from unfair bargaining practices. If an improvement of the Agricultural Fair Practices Act of 1967 is deemed desirable, it must include adequate bargaining protection for the individual not wishing to join a bargaining association.

The National Cattlemen's Association has always been and always will be opposed to increased governmental intervention into the free market system. Under the proposed legislation, all bargaining associations would have to be accredited by the Secretary of Agriculture, and be required to submit annual reports to maintain accreditation. This emerses government involvement in an area of the Agrilcultural Industry where little regulation, and rightfully so, has existed. This type of involvement would likely impose additional costs both to handlers and associations in terms of dollars and time. It is probable that the handlers would be motivated to bypass governmental regulation and enter contractural arrangements with producers in a form of vertical integration. In essence, this would achieve the opposite of the bill's intent.

The need for this type of legislation may be apparent with some agricultural commodities, but the beef cattle industry neither needs nor is desirous, at this time, for this type of legislation. For the above reasons, we must urge that beef cattle specifically be excluded from the proposed National Agricultural Bargaining Act of 1979.

We ask further that this letter be made a part of the hearing record. Thank you.

Respectfully,

Lauren Carlson

Lauren Carlson
President
National Cattlemen's Association

LC/kf

NATIONAL COTTONSEED PRODUCTS ASSOCIATION, INC.
Established 1897

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MEMPHIS, TENN.
38112

MAIL ADDRESS
P. O. BOX 12023

July 10, 1979

The Honorable Frederick Richmond, Chairman
Subcommittee on Domestic Marketing,
  Consumer Relations and Nutrition
Committee on Agriculture
1707 LHOB
Washington, D. C. 20515

JUL 12 P.M.

Dear Congressman Richmond:

The National Cottonseed Products Association, Inc., is the trade association of the cottonseed processing industry. There are 76 operating cotton oil mill members of the Association, including 21 cooperatives, which process 95% of the cottonseed produced in the United States. Additional membership is made up of brokers, dealers, refiners and chemists who handle cottonseed and its products.

This Association respectfully requests that cottonseed (and cotton) be excluded from HR 3535, National Agricultural Bargaining Act of 1979.

Cottonseed, a by-product of cotton production, is traded in a free, open and highly competitive market. The price in this market is determined solely by the operation of supply and demand. The supply of cottonseed is determined by producer decisions, biological events, and weather. The primary demand for cottonseed is derived from the mill operator's estimate of the final demand for the finished product (cottonseed meal, oil, etc.). Typically, an entire year's supply of cottonseed is purchased by the oil mill operator during the three to four months harvest period. At that time, the purchaser assumes the risks of buying a raw material from which commodities are produced for sale on a free market from one day to an entire year later, at an unknown future price. The present pricing mechanism was developed over time to provide a solution that is economically fair to both producer and buyer. This marketing system, which has been successfully in operation since the late 1800's, does not lend itself to the mandatory features of the proposed legislation.

The commodities produced from cottonseed are in direct competition with products processed from soybeans, peanuts, corn, safflower, animal fats, etc. Because of the tremendous volume of production soybean products usually set the price trend for competing products.

It is the opinion of the members of this Association that introduction of regulations which would interfere with a marketing system which works and is fair to both the producer and consumer would serve no useful purpose.

Sincerely,

Kenneth O. Lewis

Kenneth O. Lewis
Executive Vice President

JUL 23 1979

Cir Sub

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(913)[illegible]

July 18, 1979

Dan Glickman M. C.
1123 Longworth HOB
Washington D. C. 20515

Dear Rep. Glickman:

I am writing to express opposition relating to HB3535, the Farm Bargaining Bill for 1979, which is before the House Agriculture Sub Committee of which you are a member.

I believe this bill is an unnecessary piece of legislation because there is a Legislative Act already in effect that provides all the bargaining power and privileges that agriculture needs. This is the Capper-Volstead Act. It is fair and impartial in its provision for establishing farm product prices by various qualified farm groups. I do not believe that this will be the intent of HB3535.

Secondly, I am opposed to any further intervention by the Government in Agriculture. Intervention in the past and continuing in the present has led to nothing but chaos in the economic and social stability of farming. One of the main provisions of this Bargaining Bill is the participation of Government in any negotiations held. With the obvious domination of Government Bureaucracies by big Business Interests and Conglomerates, how in the world can farmers expect fair consideration in any negotiations to determine a price for farm products at the bargaining table.

Third, any government envolvement naturally leads to more bureaucracy and additional expenses. I don't think I need to elaborate further on this point. I'm sure you have opposed bureaucracy in your political campaigns and political career and will continue to do so in the future.

I believe the real reason behind the effort to enact this bill is to ultimately destroy the Capper-Volstead Act. The Capper-Volstead Act was

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written for Agriculture for the same reason Labor got the Wagner Act and Business and Industry got the Sherman Anti-trust Act. In other words, to give the weak an opportunity to organize their efforts and interests to protect themselves from the domination and manipulations of the powerful elements in their fields. If Agriculture loses the Capper-Volstead Act, I believe you will see the end of any chance for the family farmer to ever achieve equality in the market place. There are many knowledgable people who are saying that the only way for farmers to gain their freedom is through voluntary organization and un-inhibited Collective Bargaining.

There are many other things to be said in opposition to this Bill but I would like to conclude by saying that I am aware of groups who are endorsing HR3535, but I believe it is because they cannot truly qualify as Bargaining Agencies under the Capper-Volstead Act to enhance farm prices for their members. Instead, they have a greater interest in establishing their members as customers for services and products offered for sale and profit for the parent associations.

As a final request, I would like to have this letter entered into the Records of the Sub-Committee Hearings.

Respectfully yours,

Paul Nauer

Paul Nauer

President Kansas National Farmers
Organization

STATEMENT OF
THE NATIONAL TURKEY FEDERATION
ON H.R. 3535
BEFORE THE SUBCOMMITTEE ON DOMESTIC MARKETING, CONSUMER RELATIONS AND NUTRITION
HOUSE COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES

The National Turkey Federation ("NTF") is the national trade association representing producers of turkeys and processors of turkeys and turkey products. The 2800 members of the NTF are responsible for the production and marketing of the major portion of the nation's turkey crop. Approximately 65 percent of NTF's members are strictly producers.

NTF is strongly opposed to H.R. 3535. The provisions of this legislation would benefit neither producers, processors nor the consumers of this country. At the NTF annual meeting in San Diego this year, the Board of Directors of NTF unanimously adopted a resolution opposing all mandatory farm bargaining legislation.

NTF's members are opposed to enactment of H.R. 3535 and similar legislation for what can be reduced to three reasons: (1) The legislation constitutes a sharp departure from the basic economic principle that buyers and sellers in this country are free to do business or not to do business with one another without government compulsion either way; (2) Bargaining associ tions would be given a significant and decisive advantage under the legislation to the detriment not merely of processors but of the many producers who wish to remain independent; and (3) H.R. 3535, as would other mandatory farm bargaining bills, creates a new federal regulatory body whose operations would be complex, time consuming, susceptible of delay and extremely costly for the public as well as the regulated processors and producers.

What is particularly objectionable about this bill is that it would have all these far-reaching and serious adverse consequences, when there has been no showing of need for any mandatory farm bargaining bill. Because we believe there is no need for this type of bill at all, NTF will not address itself in detail to the particular provisions of H.R. 3535 but will discuss the major negative features of the legislation as a whole.

An extremely important principle on which our economic system operates is that buyers and sellers of goods and contract services may select their suppliers and customers without government interference. This principle has repeatedly been endorsed by the U.S. Supreme Court. It proceeds on the premise that the public interest is best served by a capitalistic system that rewards efficient buyers and sellers and through the competitive process enhances the productivity of the overall market.

Mandatory farm bargaining legislation would depart from that principle by requiring handlers, such as turkey processors and those who both produce and process, to negotiate in good faith with accredited bargaining associations over contract terms. This provision does not merely impose a superficial duty to "sit down at the table" and hold brief or inconclusive conversations. If the standards of labor law, from which the notion of good faith bargaining is derived, are applied, the obligation is imposed on both sides to strive to teach an agreement. Failure to enter into the process with intent to reach agreement therefore could constitute an unfair practice within the meaning of the bill. Thus, once an association has been accredited to bargain with a designated handler, it would have made considerable progress toward having obtained a contract from that handler, and on the association's terms. Once a contract has been entered into the bargaining association would, as the umbrella organization for its member growers, with government sanction, have power to designate which of those growers would provide goods and services to which handlers. We are not aware of any precedent for this departure from basic free market principles.

The proposed legislation would require the Department of Agriculture to establish an agency with at least two principal functions: (1) to manage accreditation proceedings and (2) to adjudicate unfair practice complaints. There would be no way of avoiding the creation of such an agency or reducing its regulatory responsibilities if the concept of mandatory bargaining is accepted. The legislation contemplates the accreditation of one or more associations as the agent or agents for growers in dealing with specific designated handlers for specific agricultural products. Accreditation would quickly evolve into a complex proceeding. As required by the Administrative Procedures Act and the due process clause of the Constitution, affected handlers would be given an opportunity to participate in accreditation proceedings and so, presumably, would competing associations.

The proceedings would necessarily be adversarial, and adversary proceedings are expensive in terms of both time and money.

The burden on the agency and on the parties of accreditation proceedings, however, could be relatively insignificant when compared with unfair practice cases which would also be conducted by the Department of Agriculture. Just the litigation of charges of failure to bargain in good faith would require a substantial time and manpower commitment from the regulatory agency. At issue would very probably be such questions as the duty to bargain over exclusive agency contracts, what constitutes a legitimate efficiency premium to a grower who may not be an association member, and whether it is an unfair practice for a handler under any circumstances to negotiate directly with a producer who is a member of an association. These very fundamental issues would require refining through adjudication, and would be vigorously contested. Their resolution could well result in making the government a participant in every negotiating session and every business transaction between handlers and growers.

This result would occur even without the provision of the proposed bill authorizing the Secretary of Agriculture to impose compulsory arbitration on the parties. That provision only underscores the fact that this legislation represents an extreme departure from accepted economic principles.

The very substantial regulatory cost of the legislation seems apparent to NTF. What may not be so obvious but is nevertheless present is the preferential status which would be given bargaining associations in their relations with handlers and independent producers. Accredited bargaining associations woul be in a position to bring enormous pressure to bear on handlers to sign exclusive supply contracts. The entire legislative structure seems designed to encourage these agreements. Associ tions become accredited upon a showing, in part, that they represent sufficient growers to act as an effective agent in dealing with the designated handler. The duty to bargain with the association contemplates dealing only with the association rather than directly with its members thus establishing a frame work for the allocation of particular growers to the handler involved. The possibility that more than one association will be accredited to a handler provides a further impulse for each association to seek an exclusive contract to freeze out its rivals. In addition, the refusal to negotiate in good faith for an exclusive contract could very well constitute an unlawfu practice subjecting the handler to damages and injunctive sanct

By the same token, there would be virtually irresistibl pressure on producers to join bargaining associations even if they desire to remain independent. The independent producer i prevented from receiving any more favorable payments than an association member. Even if such payment represents an efficie premium, the handler will be called upon to show that it is not an unlawful inducement to the producer to stay out of the association. The prospect that the handler will sign an exclusive contract with a bargaining association creates a substantial risk to the producer in remaining independent. It is also noteworthy that the legislation, unlike the Agricultural Fair Practices Act which it would repeal, does not prohibit bargaining associations from coercing, intimidating or otherwise engaging in unfair practices affecting a grower who desires not to join an association.

The net effect of the proposed legislation would be to increase costs of production and processing, reduce efficiency of operations, artificially increase prices and generate potential market dislocations. The administrative costs alone would be immense. Even these costs would be overshadowed, however, by those which would result from the elimination of the right of producers and handlers to deal with one another individually and the elimination of competition among handlers and among producers based on payments which reward efficiency. The legislation presents the danger that some handlers will be forced by the association to deal with less efficient producers, including those remote from the processors' place of business. The likelihood is that any geographic or product segment which is subjected to mandatory bargaining will as a result of increased costs and impaired efficiency lose markets to those segments which have not been affected.

These adverse consequences would result from enactment of the legislation notwithstanding the absence of any demonstrated need for mandatory farm bargaining. It must first be emphasized that the National Turkey Federation is not opposed

best copy available

to the right of bargaining associations to operate. If a bargaining association and a processor desire to deal with one another, that is entirely up to them. Current law, including particularly the Agricultural Fair Practices Act and the antitrust laws, offer ample protection against coercion, intimidation or boycotts which interfere with the right of producers to join bargaining associations and the ability of associations to operate. The fact is that bargaining associations have been unable to generate sufficient interest in our industry.

As noted above, it has not been the purpose of this statement to deal in detail with various specific provisions of the legislation which NTF considers highly questionable. Briefly stated, these include the check-off provisions, the extreme sanctions under the bill which would be imposed by the Department as well as the courts, the prospect for further burdening already crowded court calendars, the excessive investigatory powers of the Department and the limited access of handlers to judicial review. We could discuss each of these aspects of the at some length.

It is, however, the basic thrust of the bill which we oppose. In the final analysis, there is no justification for establishing a mandatory farm bargaining structure.

Richard McGuire
President
Cambridge, N.Y. 12816
Telephone: (518) 684-3143

John S. Gold
Administrator

NEW YORK FARM BUREAU
RT. 9W GLENMONT, NEW YORK 12077
518-436-8495

July 2, 1979

Honorable Frederick W. Richmond
House of Representatives
1707 Longworth Building
Washington D.C. 20515

Dear Fred:

It is our understanding that the Subcommittee on Domestic Marketing, Consumer Relations and Nutrition will be considering H.R. 3535 the National Agricultural Bargaining Act. The New York Farm Bureau supports this legislation and we urge your support of it as Chairman of the Subcommittee and a representative of New York.

Few agricultural proposals introduced, mean more to the preservation of many small family farms than this bargaining bill. The need for farm bargaining rights legislation in New York stems from the disparity of bargaining power between many small family farms which produce fruits and vegetables for processing and a few large food processing corporations which dominate the food industry. At one time many central and terminal markets existed and prices were established competitively. This has changed, the power of price establishment often rests in the hands of a few corporations. Individual farmers are virtually helpless to influence contract terms. Because of the perishable nature of agricultural products, farmers have been faced with unreasonable returns paid for their efforts and no legal base to bargain with food processors.

The processing apple industry in western New York is an excellent example of the need for a legal bargaining structure between growers and processors. Because price is largely determined by one or two large processors, processed apple growers in New York have consistantly received less for their produce than growers in competing states. Yet it is interesting to note that New York brands of apple sauce made from cheaper apples do not sell for cheaper prices to consumers. Growers have organized in some cases to hold their product from the processor to force bargaining, only to see it rot in the fields, as the processor buys from unorganized sources. Grower hold outs are often detrimental to the grower, processor, and the consumer.

We believe H.R. 3535 is self help legislation which will enable farmers to organize accredited associations and allow them to bargain in good faith with processors. It will help re-establish the necessary economic balance for a strong agricultural economy. The long term impact of the present situation will be decreased production, reduced number of producers, higher prices for consumers and erosion of segments of our agricultural industry.

While in Washington, D.C., in May, we discussed with Glenn Van Bramer the possibility of a hearing in western New York (Rochester area) on H.R. 3535. We would be willing to assist your office in any way to set up such a hearing, if you should desire.

Thank you for your time and consideration on this matter.

Sincerely,

Dick McGuire

Richard McGuire, President

NEW YORK FARM BUREAU
RT. 9W GLENMONT, NEW YORK 12077
518-436-8495

Statement of the New York Farm Bureau To the Subcommittee on Domestic Marketing Of the House Committee on Agriculture

Regarding: H.R. 3535, the National Agricultural Bargaining Act of 1979.

Submitted by: Robert A. Smith, Associate Director of Public Affairs, New York Farm Bureau

The New York Farm Bureau appreciates this opportunity to submit testimony in support of H.R.3535, the National Agricultural Bargaining Act. New York Farm Bureau is a general farm organization representing 21,000 farm families in the 52 agricultural counties of New York.

The National Agricultural Bargaining Act of 1979 is self-help legislation which addresses the inability of farmers to effectively price and market their commodities through their own organizations under the present situation. Due to the especially extreme conditions of the past several years it has been evident to farmers engaging in the production of products sold under contract that the need exists for a more equitable and balanced method of negotiating with processors with respect to price, and other contract terms. Because of the perishable nature of agricultural products and the fact that handlers of agricultural products are not required to bargain in good faith, farmers in New York State have been faced with unreasonable returns paid for their efforts. The long term impact of an inadequate rate of return for the cost and investment of the farmer will be decreased production, reduced numbers of producers, higher consumer cost and an erosion of the agricultural industry.

The New York Farm Bureau and the producers it represents have no interest in generating inflated prices which results in the inability of the processing industry to prosper. For a strong agricultural industry to exist both the processing industry and the agriculture industry must remain viable. We support this legislation because the continuation and existance of many small family farms is currently being threatened.

In 1978 the New York Farm Bureau supported a state agricultural marketing and bargaining bill (New York State bill S. 7211, A. 9380). One of the major objections of the proposal was that it would put New York State in a differing agricultural bargaining situation than

(more)

farm bureau

The Key to Better Farm Living

other neighboring states and that although the bill has justification it should be done nationally so that all growers are treated alike. The National Agricultural Bargaining Act allows uniformity and equity for producers nationwide, which state laws do not allow for.

The processing apple industry in western New York is an excellent example of the need for a legal basis for good faith bargaining between growers and processors. Because price is largely determined by one or two large processors, processed apple growers in New York have consistantly received less for their produce than growers in competing states. Yet New York brands of apple sauce made from cheaper apples do not sell for cheaper prices to consumers. Growers have organized in some cases to hold their product from the processor to force good faith bargaining, only to see it rot in the fields, as the processor buys from unorganized sources. Grower hold outs are often detrimental to the grower, processor, and the consumer. The National Agricultural Bargaining Act will require the processor to offer the same terms to accredited association as he offers to unorganized sources.

At one time many centralized and terminal auction markets existed with many growers and numerous buyers. Under this situation price was determined competitively; but with the deterioration of these markets the power of price setting rest in the hands of a few corporations. Individual farmers are virtually helpless to influence contract terms.

A Cornell University review of cost account apple farms in Western, New York clearly indicates the seriousness of the continued viability of the processing apple industry in western New York. From 1967 to 1976 the average return per dollar of cost was $1.02. With this low average return per dollar over a ten year period there can be little capital accumulation for new investment in equipment storage facilities or non-bearing orchards generated from the average apple enterprise (Note Table 1).

We do not contend that the National Agricultural Bargaining Act will solve all the problems of producers and result in the survival of all family farms. But the Act will allow farmers a tool so that if they voluntarily decide to organize and meet accredition standards they can sit down and bargain in good faith with processors. The National Agricultural Bargaining Act will allow for increased stability in a market where price fluctuations have discouraged increased investment in farming operations.

The Act by adding stability to the market and encouraging interest in family farm operations will benefit the consumer and not result in substantially higher prices. Only 39 percent of the food dollar can be attributed to the wholesale cost of the agricultural product thus changes in other costs such as transportation and labor have a greater impact on the consumers food

(more)

dollar. With many processing products like apples in New York, less than 25 percent of the food dollar normally is attributed to the wholesale cost of the product. More important to the consumer food dollar, is the long term continuation and viability of family farms which this bill will aid.

The New York Farm Bureau strongly endorses H.R. 3535 the National Agricultural Bargaining Act. We believe that this legislation which will allow farmers the opportunity to bargain in good faith with processors with respect to their commodity will re-establish the economic balance necessary to strengthen the agricultural sector of our economy in New York. We thus urge your favorable consideration of this proposal.

Table 1

Selected Factors for Apple Enterprises

Cost Account Farms

Western New York, 1967 to 1976

Year	No. of enterprises	Acres/ enterprise	Yield per acre bu.	Production cost* /acre $	/bu. $	Profit /acre $	/bu. $	Return /dollar of cost $
1976	18	69	459	819	1.79	308	.68	1.33
1975	20	60	414	658	1.59	-221	-.53	.72
1974	18	57	405	705	1.74	157	.39	1.19
1973	19	58	317	557	1.76	257	.81	1.37
1972	19	58	370	497	1.34	- 61	-.16	.90
1971	11	68	359	528	1.47	-199	-.55	.66
1970	13	82	373	499	1.34	-198	-.53	.68
1969	13	77	323	460	1.42	- 97	-.30	.82
1968	13	83	276	405	1.47	19	.07	1.04
1967	12	86	386	414	1.07	107	.28	1.22
10 yr. weighted average	16	68	370	561	1.52	15	.04	1.02

* Growing and harvesting costs only. Does not include cost to haul the crop off the farm or other marketing costs or storage costs.

From Table 1 we can see how production costs have steadily increased over the past 10 years as well as how variable the profits have been. Over that period of time these Cost Account apple enterprises have done little better than break even. With a 10 year average profit per acre of $15 or a return of $1.02 per dollar of cost there hasn't been a great deal of capital accumulation for new investment in equipment, storage facilities or non-bearing orchards generated from the average apple enterprise.

pgi

POTATO GROWERS OF IDAHO
Producers of World Famous Potatoes

July 6, 1979

GERALD L. MURPHY
General Manager

Honorable Frederick Richmond, Chairman
Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition
Agriculture Committee
United States House of Representatives
Room 1707 Longworth House Office Bldg.
Washington, D. C. 20515

JUL 9 PM.

Dear Mr. Richmond:

We wish to offer an expression of support for HR 3535, the National Agricultural Bargaining Act, which is the subject of hearings of your subcommittee on July 10 and 11.

Inasmuch as we are interested in this legislation and requested the privilege of appearing at the hearing, we would appreciate your inclusion of this letter in the record of the hearing on HR 3535.

Also, we would welcome the chance to be represented at a field hearing in the western United States at which time our views may be expressed in more detail and subject to questions from subcommittee members in attendance.

The Potato Growers of Idaho, Inc., is a voluntary association of potato producers. The production of our sixteen hundred members represents nearly half of the state's output. Idaho produces more than a fourth of the Nation's potatoes.

Our potatoes are sold to processors and fresh dealers; also, seed potatoes are sold to commercial potato growers. Three-fourths of our commercial sales are to processors of frozen and dehydrated potato products. Most of the purchases of french fry processors and around one-third of the purchases of dehydrated potato processors are made through pre-season growing contracts. These contracts are negotiated between individual processors and the Potato Growers of Idaho.

PHONE 208/785-1110
STATE OFFICE — P.O. BOX 949 — BLACKFOOT, ID 83221 — [redacted]

Honorable Frederick Richmond
Page 2
July 6, 1979

Although we are the only organization in Idaho which establishes contract terms through negotiations, there are several forms of competition which limit the influenc we have over the final contract details:

1. The processor has complete freedom to selec which growers will be offered contracts and how much volu each grower is offered.

2. A processor can change the volume he contra with independents and with association members as well as the amount he purchases from neighboring states.

3. Although our members agree to sell their contract potatoes through only approved contracts and although they agree to be subject to a damage claim of ten percent of an unapproved contract sale, their dominan motive is to find a home for their potatoes. Price is second in importance.

4. With respect to price, the processor attach much more significance to a penny than the growers attachs to a dime. Each nickel increase in the price means a hal million dollars to some processors and only $2750 to an average grower.

We negotiate contracts with ten Idaho potato process who will buy nearly $100 million worth of potatoes grown in 1979. This is one of the largest volumes of contract business done in any commodity used by food processors. The negotiating environment is extremely competitive and the chance of experiencing an impasse is significant. In the last five years negotiations broke down with one maj firm in 1978, another major firm in 1976, with all but three firms in 1975. On two of these occasions, we sough relief under the Agricultural Fair Practices Act of 1967 once through a complaint to the Secretary and once throug an action in U. S. District Court. No action ensued from the complaint through the Secretary and the District Cour action helped produce a restoration of business relations

The Agricultural Fair Practices Act of 1967 has prov inadequate, especially in its failure to give the produc bargaining association an opportunity to be recognized a dealt with as the growers' agent. Its effect has been limited mainly to providing injunctive relief to growers who were victims of unfair trading practices. Many growers who were dropped as contract suppliers could not obtain relief under this act unless the violation was due to intentional discriminatory acts of dealers that primarily related to a grower's affiliation with a bargaining association.

There is definitely a need for legislation which would provide the producer with a more balanced and equitable climate for contract negotiations. We have examined HR 3535 and believe it accomplishes the objective.

Although the provisions for arbitration go beyond what might be needed by potato producers in Idaho, we recognize that it might be necessary to help establish a climate for fair dealings on other agricultural commodities.

We would only be interested in an act which applies to contract purchases in advance of harvest. The open market purchases of fresh dealers and processors take place in a trading environment which is not faced with the same conditions that give rise to a need for this legislation.

Some are concerned that the Act would fragment the bargaining process by making it possible for splinter groups to organize bargaining units. It should be noted that each individual farmer not now affiliated with a bargaining association is a one-man splinter group. It would be easier to organize competing factions of farmers than it would unaffiliated farmers.

Some opponents of this legislation might complain that it would not protect the unaffiliated farmer from discriminatory or unfair practices. We do not believe this is so but if this is your subcommittee's interpretation, we would support an amendment which would ensure protection of all producers regardless of whether they are affiliated.

The consumer is served by an orderly bargaining process. Without it the pleas by farmers for government intervention in the marketplace would increase resulting in higher costs of farm subsidies. Also, a volatile market for processor's raw products could result in large fluctuations in production and prices at the retail level.

We are pleased to join most general farm organizations and commodity bargaining associations in support of HR 3535. Some opponents might observe that not all farm groups favor this legislation; however the farming community is sufficiently diverse that the absence of unanimity need not mean a lack of urgency for this legislation. Surely Congress deals with issues all the time which do not have the unanimous support of a segment of our society.

Thank you for this opportunity to comment on HR 3535 and to request a field hearing in the western United States.

Cordially,

Gerald F. Murphy

PRODUCERS COTTON OIL COMPANY
P. O. BOX 1833
FRESNO, CALIFORNIA 93717

GERALD R. BREWER
PRESIDENT
CHIEF EXECUTIVE OFFICER

July 27, 1979

Hon. Frederick W. Richmond
House Office Building
Washington, D.C. 20515

AUG 1 A.M.

Dear Mr. Richmond:

After studying HR 3535, the latest version of the proposed National Agricultural Bargaining Act (rejected by Congress at least twice in the past few years), we find the legislation still contains the same objectionable thrust as it relates to general agriculture.

The origin of this concept is rooted to crops with a narrow market base (years ago it was referred to as the "California Peach Bill"). We realize there have been problems in price negotiations between growers and the relatively few handlers of fruits and vegetables but this bill, with its broad brush approach, would create real problems in other industries where competitive factors already assure growers of highest available returns.

As an example, cotton growers have a wide choice of marketing avenues for their lint and seed through the government loan, independent and line company gins, cooperatives, compresses, FOB merchants, shippers and direct mill buyers. Similar competitive factors are present in barley and other grains, safflower, hay and many other crops.

The broad language of the bill leaves great discretion to the Secretary of Agriculture, and would lead to real problems. For example, Section 4 (a) (4), dealing with grower loans, leaves great leeway for charges by a disgruntled individual or association.

Our company has for 50 years made competitive crop loans to growers as a service and obvious inducement to gain their business. Should we offer to competitively finance a member of an association who perhaps now finances with a bank, this bill provides for a "de facto" complaint that we were offering money to induce the grower to leave an association. Should the grower initiate the request, as often happens, that association surely would complain that we were guilty of an "unfair practice."

The bill almost certainly is inflationary and of questionable value. Regardless of changed market conditions, a processor could not pay more or offer any other incentives to anyone after reaching agreement with a bargaining group, unless retroactively paying the same to all others.

Because of the competitive factors at work internationally, cotton and cottonseed should be deleted from the legislation.

A great many people are concerned about the effect these provisions would have on the concepts of our free enterprise system and the open market place, and we urge that you oppose HR 3535 should the bill come before the House Committee on Agriculture.

Sincerely,

G. R. Brewer

PHONE (916) 674-5636

PRUNE BARGAINING ASSOCIATION

1307 GRAY AVENUE
YUBA CITY, CALIFORNIA 95991

July 5, 1979

The Honorable Fred Richmond, Chairman
House Agriculture Sub-Committee on
Domestic Marketing, Consumer Relations
and Nutrition
Room 1707, House Office Building
Washington, D.C. 20515

Dear Congressman Richmond:

Enclosed is our statement in support of H.R. 3535, the National Agricultural Bargaining Act of 1979. We respectfully request that it be made a part of the record at the hearings to be held by your Sub-Committee, on July 10 and 11, 1979.

The P.B.A. also respectfully requests that your Sub-Committee hold field hearings, after the hearings in Washington, D.C., preferably one of which could be held in Sacramento, California.

We sincerely regret that conflicting commitments will not allow us to appear at the hearings on July 10 and 11. We support the statements of the American Farm Bureau Federation, National Farmers Union, National Grange and National Council of Farmer Cooperatives, as well as the California Tomato Growers Association on H.R. 3535, in particular and the statements of other agricultural bargaining cooperatives in general.

Lastly, we sincerely urge that the Sub-Committee on Domestic Marketing, Consumer Relations and Nutrition approve H.R. 3535 with a recommendation of passage to the full House Committee on Agriculture.

Thank you for your kind consideration. For the Prune Bargaining Association, I remain,

Respectfully,

Kenneth Davis

Kenneth A. Davis
General Manager

KAD/ml
enc.

KENNETH A. DAVIS
GENERAL MANAGER
PRUNE BARGAINING ASSOCIATION

Mr. Chairman and members of the Sub-Committee. The Prune Bargaining Association is a non-profit, agricultural, bargaining cooperative, incorporated in March of 196 under Chapter 4, Division 6 of the Food and Agricultural Code of California, whose purpose is to (1) improve the economy of the California prune industry, (2) encourage production of quality product and (3) render services to its members, including the selling and marketing its members' products.

Membership in the Prune Bargaining Association is open to all producers of plum-prunes in California. Only producers are eligible and only producers may be elected to the board of directors or serve as officers.

The P.B.A. was formed by producers who found the need for a vehicle to assist them in establishing fair and equitable prices and terms of sale for their crop out of economic necessity. During the first two years of operation, because of resistance from prune handlers to agree to fair prices, it was necessary to resort to third party arbitration proceedings in order to establish prices. During that same period and in subsequent years to the present, anti-association discrimination by some prune handlers has existed towards some members and prospective members of the P.B.A. Although the degree of such practices has diminished in recent years, it still exists.

As an association of primarily small family farms and a relatively small, specialty commodity, we have had the unnecessary experiences with all of the "Unfair Practices" referred to in HR 3535, with respect to producers.

As we have also been part and party to the development of HR 3535 from its inception, we are very familiar with its need, its language, meanings and intent. We support it, as is, one hundred percent. It is a document that has taken years of preparation, compromise and unprecedented cooperation by the various producer associations throughout American agriculture. It is a proposed law that is badly needed by all producers and its passage into law is long overdue.

Its opponents will certainly bemoan its supposed effects on food prices and inflation, erroneously, because they wish to continue the very unfair practices HR 3535 seeks to eliminate. It is certainly within their best financial and power interests to lament higher food prices in disguise of their real desire to deprive the producer of equal marketing entitlement or necessary bargaining equality.

In anticipation of such opponent charges, it should be recognized that it is a proven fact that, food costs will increase substantially per annum at the wholesale and retail level while prices paid to producers remain constant or even decline. HR 3535 is not intended to increase food prices or should it be misconstrued or labeled as such. It is simply designed to assure producers of the rights already possessed by every other segment of our society by establishing fair practice standards for both producers and handlers of agricultural products. It will allow producers the long-overdue ability to enhance their position in a market where they are currently at a serious competitive disadvantage by accrediting associations and providing the assistance, sometimes necessary, of mediation and enforcement through the Secretary of Agriculture.

We, therefore, respectfully beg this Sub-Committee to pass HR 3535.

Thank you for the opportunity to enter this statement on behalf of the Prune Bargaining Association.

BOARD OF DIRECTORS

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SYDNEY C. REAGAN
General Counsel

Southwestern Peanut Shellers Association
6815 PRESTONSHIRE
DALLAS, TEXAS 75225
(Code 214) 368-2014
(Code 214) 692-3332

July 28, 1979

The Honorable Tom Foley, Chairman
Committee on Agriculture
House of Representatives
Washington, D. C. 20515

Dear Mr. Foley:

The members of the Southwestern Peanut Shellers Association wish to go on record in opposition to H.R.414 introduced by Mr. Hansen and H.R. 3535 introduced by Mr. Panetta as being completely unnecessary to assure fair practices in Agricultural bargaining and as being directed at the creation of monopolies in the marketing of agricultural products.

I will appreciate this statement being made a part of the record in connection with these two bills.

Sincerely yours,

Sydney C. Reagan

Sydney C. Reagan
General Counsel

ACTIVE MEMBERS

BIRDSONG PEANUTS
Gorman, Texas

BIRDSONG PEANUTS
Plant II
Gorman, Texas

BIRDSONG PEANUTS
Bain Division
San Antonio, Texas

BORDEN PEANUT COMPANY, INC.
Portales, New Mexico

BRADY MILLS, INC.
Brady, Texas

DE LEON PEANUT COMPANY, INC.
De Leon, Texas

DE LEON PEANUT COMPANY, INC.
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Madill, Oklahoma

WOLDERT PEANUT COMPANY, INC.
Dublin, Texas

TREE TOP
INCORPORATED
GENERAL OFFICES • PHONE 509/697-7251 • BOX 248, SELAH, WASHINGTON 98942

RECEIVED
1979 JUL -3 AM 9 10
OFFICE OF
HONORABLE THOMAS S. FOLEY

June 28, 1979

Representative Tom Foley
Longworth House Office Building
Washington, DC 20510

Dear Representative Foley:

We want to express our opposition to the proposed National Agricultural Bargaining Act of 1979, (H.R. 3535 and S. 1193). This legislation if enacted would drastically change the agricultural sector of the country.

Farmers and food processors would lose the freedom to sell and buy as they choose. This loss would reduce incentive and competition in agriculture. It would be an end of the independence long shared by farmers and processors.

The clear intent of the proposed legislation is to raise prices, reduce competition and strengthen the hand of the bargaining association organizers. This would result in inflation to the consumers and lost production to the farmer because of consumer resistance to higher prices or from decreased exports and increased imports.

We feel that there is adequate legislation for the protection of farmers under the Capper-Volstead Act and other laws such as the Agricultural Fair Practices Act of 1967 which was enacted to ensure equal marketing power for farmers and handlers.

The food processing industry is dependent upon a healthy farm sector. We recognize that the farmers face serious economic difficulties, just as we do. But, the solution is a fair price in a competitive environment not a federally guaranteed market.

I urge you to consider the foregoing, and not support this proposed legislation.

Sincerely,

TREE TOP, INCORPORATED

Dennis J. Colleran

Dennis J. Colleran
Controller

DJC/hw

APPLE PRODUCTS • APPLE JUICE • FROZEN CONCENTRATE • EVAPORATED AND DEHYDRATED PRODUCTS

WOMEN FOR THE SURVIVAL OF
AGRICULTURE IN MICHIGAN

President: Secretary:

6690 Walker N. W.
Grand Rapids, MI 49504

July 8, 1979

The Honorable Fred Richmond, Chairman
Domestic Marketing, Consumer Relations and Nutrition
1707 Longworth Bldg.
Washington, D. C. 20515

JUL 12 PM

Dear Rep. Richmond:

The West Central Chapter of Women for the Survival of Agriculture in Michigan strongly urges that field hearings on the National Agricultural Bargaining Bill (H. R. 3535) be held before fall. We request that one of these hearings be held in the Midwest.

The hearings in Washington, D. C. to be held this week do not allow enough time for those interested to be heard. We have lived, worked and marketed and bargained for fruits and vegetables under the Michigan Agricultural Marketing and Bargaining Act. We would like an opportunity to testify--especially an opportunity that would not involve the tremendous cost in traveling to Washington, D. C.

We are in support of the National Bargaining Bill and believe that our first-hand experience with similar legislation should be shared with your committee. Thank you and we look forward to hearing from you.

Sincerely,

Sharon Steffens
Sharon Steffens
West Central Chapter

NIMPA

THE NATIONAL INDEPENDENT MEAT PACKERS ASSOCIATION 734 15TH STREET, N.W., WASHINGTON, D.C. 20005 • (202) 347-1000

August 13, 1979

The Honorable Frederick W. Richmond
Chairman
Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition
Committee on Agriculture
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

A careful analysis of H.R. 3535, the Agricultural Bargaining Act of 1979, has convinced us that it is an unneeded piece of legislation. We request this letter opposing further congressional consideration of the bill be made part of your committee's record.

To identify ourselves, The National Independent Meat Packers Association (NIMPA) has a national membership of approximately 300 meat companies. Included are most of the nation's major beef slaughtering and processing firms plus many local and regional pork operations and processed meats manufacturers.

NIMPA is not a johnny-come-lately to this issue. Our historical position has been to oppose any form of compulsory bargaining for agricultural products. We see no reason to change our posture.

We still firmly believe that an unfettered marketplace that is allowed to operate competively within the confines of supply and demand is the most efficient and fair means for producers to dispense their goods.

After studying H.R. 3535, NIMPA is deeply concerned about the long-range effects of this bill. At a time when the mood of the nation is against more government involvement with private enterprise, we see H.R. 3535 forcing the government to play a major role in marketing of farm goods.

Proponents of the bill have yet to satisfy our qualms nor justify their support for adding another multi-layered bureaucracy to administer, police and adjudicate the provisions of H.R. 3535.

The language of H.R. 3535 requires the Secretary of Agriculture, and by necessity fortified by a small army of government employees, to accredit producers associations and resolve complaints of unfair practices.

This bill would also bestow on the Secretary an all encompassing authority over the entire spectrum of buying and selling agricultural commodities.

We worry that this will open the door to more problems, confrontations and marketplace dissatisfaction than now exists. We question the wisdom of giving the Secretary the authority to "establish a procedure for compulsory and binding arbitration." Is it not entirely possible that this power would ultimately have the effect of making USDA responsible for food prices?

Mr. Chairman, we respectfully request your committee to set H.R. 3535 aside.

From our vantage point, we find today's agricultural marketing system viable. If it is left alone, it will continue to function satisfactorily. It is not broken, Mr. Chairman, so why spend important congressional time trying to fix it?

Very truly yours,

John G. Mohay

John G. Mohay
President

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AGRICULTURAL BARGAINING ACT

FRIDAY, APRIL 18, 1980

House of Representatives,
Subcommittee on Domestic Marketing,
Consumer Relations, and Nutrition
of the Committee on Agriculture,
Sacramento, Calif.

The subcommittee met pursuant to call, at 9 a.m., in room 127, 1222 N Street, Hon. Frederick W. Richmond (chairman of the subcommittee) presiding.

Present: Representatives Panetta, Nolan, and Glickman.

Also present: Joseph R. Crapa.

Mr. Richmond. Good morning, ladies and gentlemen.

My name is Fred Richmond. I am chairman of the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition of the House Agriculture Committee.

It's a pleasure to be here with you this morning to consider H.R. 3535, a bill introduced by my distinguished associate, Mr. Leon Panetta, whom I would like to introduce now.

OPENING REMARKS OF HON. LEON E. PANETTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Panetta. Thank you.

Ladies and gentlemen, Mr. Chairman, this hearing marks a crucial point in the legislative history of H.R. 3535, National Agricultural Bargaining Act.

Hearings were held on this matter in the summer of last year in Washington, D.C., at which the various provisions of the legislation were discussed in some length by a number of interested parties from across the Nation.

Those hearings were helpful and, I think, constructive. They helped give us an idea of how the various pieces of this legislation would fit together, to try to address a problem that exists in this area.

After those hearings, I and my colleagues on the committee felt the need for gathering additional information, directly from the growers and from the processors throughout the country about the specific problems that you are experiencing.

I hope that we can focus today on the very real day-to-day problems that you face as growers and as processors in your respective and mutual efforts to gain some kind of economic achievement.

There are, as you well know, certain tensions that are inherent in your relationships. This is as it should be in a competitive free market system.

At the same time, you're dependent on each other for your own success and your own economic well-being. It behooves all of us to come to a better understanding about how your relations with each other work, whether they are working well and why your relations, at times, have broken down.

Our objective in this inquiry, I think, is very simply to find out what present practices in agricultural bargaining are and whether they comport with our mutual and deeply held notion of fairness and equality.

Throughout the history of our Nation we have sought, as a government, to establish a process within which the free and competitive market system could work. We have always striven to make that process fair in the belief that justice is best served with competing private interests having equal opportunity and an equal voice in shaping their future.

I want to welcome all of you here today. Your testimony will be given careful consideration.

For those of you who are unable to speak today, I am sure that the chairman would accept your written remarks and have them introduced into the official record.

Mr. RICHMOND. Thank you, Mr. Panetta.

I would like to introduce our other colleague, Representative Dan Glickman from Kansas, one of our other distinguished members of the Subcommittee on Domestic Marketing, Consumer Relations and Nutrition.

OPENING REMARKS OF HON. DAN GLICKMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. GLICKMAN. Yes, Mr. Chairman, just a note to thank you for scheduling these hearings.

I, of course, represent the State of Kansas which is not quite as significant in terms of the national economy with respect to agriculture as California, but we are the largest wheat-producing State in the country. Many of our producers have the same problems as the people reflected in these hearings today. And I want to thank Mr. Panetta for sponsoring this legislation and for having us here.

Mr. RICHMOND. Thank you, Mr. Glickman.

Our first witness this morning is Mr. Richmond Rominger, director of the Department of Food and Agriculture, State of California.

Good morning, Mr. Rominger.

STATEMENT OF RICHARD E. ROMINGER, DIRECTOR, CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Mr. ROMINGER. Mr. Chairman and distinguished members of the hearing panel, I am Richard E. Rominger, the director of the California Department of Food and Agriculture.

On behalf of Governor Brown and the department, I welcome you to California, the Nation's No. 1 farm State.

Although we are perhaps better known for Disneyland, our freeways, and our smog, the really exciting story of California is its agricultural abundance. If California were an independent country, it would be the seventh largest agricultural economy in the world. California agriculture directly or indirectly provides one out of every three jobs in the State. Our $12 billion annual onfarm cash receipts flow from commercial production of over 200 different commodities, including approximately one-third of the fruits and vegetables produced in the United States. In addition to our contribution to the Nation's table, we export over $3 billion worth of food annually, 10 percent of the Nation's total, and a critically important part of our balance-of-payments effort.

We are privileged to have you visit us, especially on the question of cooperative agricultural bargaining association. Forty percent of California's agricultural production in marketed by cooperatives, the highest dollar volume in the United States. Many of our growers also participate in cooperative bargaining associations which are encouraged under California law.

Bargaining associations have a long history in California and an excellent track record of representing their growers with processors and discussing inventory, crop estimates, projected disappearance, competitor reaction, and general economic conditions nationally and internationally. And in the actual bargaining for price in terms of trade consistent with these determinations.

Based on our experience in California with cooperative bargaining associations, I am here today to support H.R. 3535 on behalf of the Governor and the department of food and agriculture.

Whether we like it or not, the classical characteristics of a free competitive society have largely vanished from the agricultural scene, if they ever existed. The current market structure is characterized by a large number of sellers but few buyers.

Just yesterday USDA reported 50 companies now control between 64 and 70 percent of the food manufacturing assets in the Nation. The resulting market power has been skewed toward buyers and from all appearances, this trend will continue.

Historically, agriculture has always been a price taker. Agriculture in California and, I believe, in the rest of the Nation has for some time suffered under a severe cost-price squeeze. Costs to growers are continually escalating, especially in the cost of energy, fertilizer, labor, and most recently, capital, as evidenced by our skyrocketing interest rates.

Processors are similarly being squeezed by their input in marketing costs. As a result, processors have been reluctant to pay growers more than they have to. One of the few ways growers have to favorably influence a fair return and to gain equal market power is to form bargaining associations. By negotiating with a single voice and having a common objective, producers are able to minimize the differential in power base between them and the processor or other handlers. This affords producers the opportunity of participating in the quantification of critical factors facing their particular commodity group. These relationships form the basis for price negotiations in which producers are able to participate more equitably and more effectively than is the case without the bargaining association.

Those producers who have not previously engaged in bargaining activities often have greater expectations than can realistically be delivered. Even those not directly involved suspect that these great expectations will be achieved. Consequently there is a popular myth that equates agricultural bargaining with high prices. Based on California's bargaining experience, it is my observation that this has not been the case. True there is an inherent upward price pressure from producers and also a downward pressure from processors. But in the final analysis, both sides of the bargaining table have recognized the need for each other. Producers need healthy processors to purchase the crop. Processors need healthy producers to be assured a supply. Should the price swing a bit too far toward one side one year, it normally swings back toward the other side the following year.

In addition to price determination, agricultural bargaining has tended to produce price stability, which reduces uncertainty. This also improves economic stability and brings about a more efficient, long-run allocation of resources.

California's bargaining law is similar to the current Federal law. The principal difference is that under our law, it is unlawful for a processor to refuse to negotiate or bargain for price and other terms of trade. This is a critical difference. A bargaining law that doesn't require a producer to recognize and bargain with a grower association is little more than a statement of intent. By refusing to bargain, processors can render an association completely ineffective and the law despite its good intentions, is worthless.

If the Federal bargaining law is to be meaningful, it must at a minimum, require processors to bargain with producer bargaining associations. By requiring formal negotiations, the stage is set to come to an agreement on price in terms of trade.

California's bargaining law does not require that an agreement must be reached but in most cases, our industry groups have been successful in coming to an agreement. Some of our commodity groups have bilaterally agreed to arbitration if their bargaining efforts are not fruitful and in a few instances arbitration was necessary.

I believe H.R. 3535 contains all of the elements of a good bargaining law. It contains adequate safeguards to protect individual producers from retaliatory action by a processor because of the producer's activities with a bargaining association. It requires processors to bargain in good faith with a bargaining association. It also requires a bargaining association to bargain in good faith with a processor and prohibits the association from taking coercive action to intimidate either a processor or a producer. It also provides for mediation and for compulsory and binding arbitration if the Secretary deems it necessary.

H.R. 3535 in its present form is enabling legislation. It gives any agricultural association the opportunity to voluntarily decide to use it providing the association satisfies the accreditation requirements of the Secretary. Producers will have freedom to make this decision. They are not required to form or join bargaining associations. Should a producer group decide to proceed and become accredited, this does not necessarily guarantee them the price they desire to have. It only provides them with a vehicle to participate in the determination of price and other terms of trade.

Based on California's history with agricultural bargaining cooperatives, one can forecast potential reactions. They are as follows:

One. The number of producer groups that will actually form an association and seek accreditation will be small relative to the total number of possible groups.

Two. Bargaining associations will not attain 100 percent participation by producers and there will be movement into and out of associations.

Three. Processors will be initially concerned about the prospect of bargaining but will adjust to the new experience.

Four. It will take time for both producers and processors to become proficient at bargaining.

Five. Bargaining will not limit supplies, restrict choices, or mandate contracts.

Six. Bargaining will reduce producer price variations and the bargained price will be fair to both producers and processors.

Seven. Industry groups that form bargaining associations will be principally those whose products are further processed.

Eight. Producers and processors will prove to be very responsible people throughout the bargaining process.

Nine. The administration and enforcement efforts will be minimal with the certification for association accreditation taking the most time.

The Governor and the California Department of Food and Agriculture strongly support the passage of H.R. 3535 as currently drafted. We believe agriculture should have the opportunity to develop effective and equal bargaining power in the determination of price and other terms of trade. We believe it will prove beneficial to agriculture as well as to the general public.

We appreciate the opportunity to share these views with you and we encourage the Committee on Agriculture to support enactment of H.R. 3535.

Thank you.

Mr. RICHMOND. Thank you, Mr. Rominger.

At this time I would like to introduce Congressman Richard Nolan of Minnesota, another member of our subcommittee.

Mr. NOLAN. Good morning and thank you for the introduction, Mr. Chairman, I am delighted to be here and have an opportunity to provide the people of California a chance to express to the committee their views on this rather important legislation.

Thank you very much.

Mr. RICHMOND. Thank you, Mr. Nolan. Mr. Panetta.

Mr. PANETTA. Thank you, Mr. Chairman.

Mr. Rominger, you commented in your testimony California's bargaining law is similar to current Federal law with the basic difference being that under our law, California law, it is unlawful for a processor to refuse to negotiate or bargain for price or other terms of trade.

What has been the history of enforcement of that provision in California? What problems have you run into? Is the California law an effective way of dealing with, requiring, and providing for fair bargaining?

Mr. ROMINGER. I guess the weakness in the California law is that there are not a lot of teeth to enforce that provision that requires bargaining. And that you have addressed in your bill by providing for compulsory arbitration if the Secretary deems that's the only way to come to a resolution. That is not in the California law.

Mr. PANETTA. What's the basic enforcement tool now? The courts?

Mr. Rominger. Yes.

Mr. Panetta. Is there in fact, a history of court action with regard to this provision?

Mr. Rominger. There has been some court action I think, for the grower point of view. And it has not been totally satisfactory.

Mr. Panetta. In those court actions, does the State department of agriculture take a position?

Mr. Rominger. We have the first responsibility to make a determination on whether there has been a violation of the State law. Sometimes that's very difficult, and we have not gotten involved too much in the litigation. The grower organizations are the ones that have gone to court then to have the law interpreted and enforced.

Mr. Panetta. So that really you as a department, then, don't really have an enforcement vehicle? You don't go into court if you make a finding that there has been a violation? The department doesn't?

Mr. Rominger. Yes; we would go into court in that case. But in some cases we have not been able to make that determination. But the grower groups have gone to court, even though we haven't made that determination.

Mr. Panetta. As far as your knowledge, what has been the experience with regard to the bargaining between cooperatives and processors?

Are you aware of, in fact, situations where processors have refused to bargain with cooperative groups by virtue of the fact that they were cooperatives?

Mr. Rominger. We have been involved in some of those discussions. Our first effort, rather than going to court, has been to try and get the parties together and explain the responsibilities under California law to the processors. That has been successful in a good many cases. The processors then have been willing to bargain. That hasn't always led to successful negotiations, however.

Mr. Panetta. Has the department been a party to those negotiations?

Mr. Rominger. We've been involved in getting the parties together. We don't act, really as arbitrators in the formal sense, however.

Mr. Panetta. As provided in H.R. 3535, you don't have in the California law the power to enforce arbitration in negotiations between the parties?

Mr. Rominger. That's correct, we do not.

Mr. Panetta. You stated that H.R. 3535, if it's enacted, that one of the consequences would be that the number of producer groups that will actually form an association and seek accreditation will be small, relative to the total number of possible groups. Why do you say that?

Mr. Rominger. I think that's been our experience, that those groups that have processing are the ones that are more apt to form groups.

If you look at the total number of crops that are produced in the United States, we wouldn't see that large a number of organizations. We would see the organizations in the areas where I think it's most critical, where there are a small number of processors that are further processing the crop. So it is important even though the total number might not be large.

Mr. **Panetta.** Is it your feeling that there still would be a large number of individual farmers who would continue to negotiate on their own with regard to their products and the processors?

Mr. **Rominger.** I am not sure whether I'm saying a large number but, yes, there will be those. Farming is an occupation where we have a lot of individuals, and they don't all end up joining associations of one type or another.

Mr. **Panetta.** In your experience, with regard to the California law, why is it that in some instances the processors have had problems in terms of dealing with bargaining cooperatives?

Mr. **Rominger.** I think it's only natural for each entity, whether it's a grower or in this case, the processor, to attempt to protect, from their point of view, as much leeway as they can, are not required to bargain. They feel they have a stronger position and if there is no bargaining association, they are certainly in a much stronger position and so I think it takes a law in the books and then some time for everyone to get used to how that should operate.

Mr. **Panetta.** Is it your feeling that if H.R. 3535 were implemented, that it would have much impact in terms of the price that would eventually go to the farmer as well as the price that would be paid by the consumer?

Mr. **Rominger.** I think over the long run, our experience has been that we don't see a big increase in prices. What we do realize is an evening out of the prices so that we don't have as wide a fluctuation as I believe we would without bargaining associations.

By being able to sit down, the growers and the processors, and take a look at what the supply is, what the demand is, they are able to even out the prices rather than the wide swings in prices that take place when there is only a small difference in supply if there is no bargaining.

Mr. **Panetta.** You say about 40 percent of crops in California are marketed through cooperatives.

Mr. **Rominger.** Correct.

Mr. **Panetta.** Those are mainly your fresh fruit and vegetable areas?

Mr. **Rominger.** That's correct, tree fruits and vegetables.

Mr. **Panetta.** Thank you very much, Mr. Rominger.

Mr. **Richmond.** Thank you, Mr. Panetta. Mr. Glickman.

Mr. **Glickman.** Thank you, Mr. Rominger, for some very excellent testimony.

Do you believe this legislation should be applicable to all crops and livestock or whether it would be more applicable to fruits and vegetables which are processed. But how do you feel about the applicability across the board to all farm commodities? Because, the way the bill is written, it applies across the board.

Mr. **Rominger.** Yes, I think it certainly would have the most application in fruits and vegetables. I think it should be up to the commodity groups whether or not they want to participate.

If there are some commodity groups that feel they don't want to be under the legislation, I think, perhaps, they should have that option. But even if they are included in the bill, they certainly don't have to form associations and bargain.

Mr. **Glickman**. But you don't think particularly we should exempt certain commodity groups under Federal legislation?

Mr. **Rominger**. I wouldn't think so.

Mr. **Glickman**. The other question is that the bill provides that those States that have general authority dealing with the same subjects should not necessarily be preempted.

But it does tend to give the Federal Government the ability to superimpose its authority over the legislation somewhat in the same way the National Labor Relations Act superimposes its authority over State labor regulations.

What would you think about legislation which would give the State, if the State adopted similar legislation, the primary authority of operating and administering this law and not Uncle Sam?

Mr. **Rominger**. I think it's always wise to give the States some latitude to take care of local conditions if that's possible. I think it's a good idea to have the national legislation so that we do have some uniformity across the country. If the provision was that if the States adopted similar legislation, they would be the primary enforcement, I think that would work, yes.

Mr. **Glickman**. Thank you, Mr. Chairman.

Mr. **Richmond**. Thank you, Mr. Glickman. Mr. Nolan.

Mr. **Nolan**. No questions.

Mr. **Richmond**. Thank you, Mr. Nolan.

Thank you very much, Mr. Rominger.

Mr. **Rominger**. Thank you.

Mr. **Richmond**. Our first panel is Mr. Henry J. Voss, California Farm Bureau Federation, Ceres, Calif.; Mr. C. Jeff Thomson, president, Kern County Farm Bureau, Bakersfield, Calif.

Mr. **Voss**. Mr. Chairman, I don't know if Mr. Thomson has arrived. I haven't seen him in the audience. But I will go on.

STATEMENT OF HENRY J. VOSS, SECOND VICE PRESIDENT, CALIFORNIA FARM BUREAU FEDERATION, ACCOMPANIED BY C. JEFF THOMSON, PRESIDENT, KERN COUNTY FARM BUREAU

Mr. **Voss**. Mr. Chairman, members of the subcommittee, I want to thank you for this opportunity to appear before you in support of H.R. 3535, the National Agricultural Bargaining Act. My brothers and I farm in the Santa Clara and San Joaquin Valleys of California where we presently raise canning peaches, prunes, grapes, almonds, cherries, melons, and fresh market vegetables. I am testifying today on behalf of myself, the California Farm Bureau Federation, and the American Farm Bureau Federation.

Even though they will not be testifying, the Farm Bureau members from several States have traveled to Sacramento to be here today to indicate their support for the bill and the need for additional field hearings around the country.

For the record, I would like to recognize at this time at least the presence of Ralph Gilmore, who has come from Ohio, a farmer and Farm Bureau member from the State of Ohio.

Hearings in other regions will allow producers of affected commodities to provide examples for bargaining problems and processor discrimination, serious problems which produces are seeking to remedy through H.R. 3535.

For the record, my personal background includes extensive involvement with a number of bargaining associations. I am a founder and past president of the Apricot Producers of California. In addition, I currently serve on the board of directors of the California Canning Peach Association, as well as being a member of the California Freestone Peach Association. I also serve currently as the second vice president of the California Farm Bureau Federation, the State's largest voluntary general farm organization.

Farm Bureau believes that the National Agricultural Bargaining Act is a crucial piece of legislation for farmers. In 1950, when I rented my first farm, there were a large number of processors in the canning fruit industry As a farmer, I was able to talk, 1 to 1, with the president and principal stockholders. During the 1960's, we saw many of these enterprises merged into larger operations. This action, combined with purchases by other segements of the food industry, left us with fewer and larger buyers.

It was no longer possible for the individual farmer to sell to the man who owned the cannery. As a result, bargaining associations became more of a necessity.

In the 1970's, the multinational corporations took over the canning fruit industry. For example, Del Monte is owned and controlled by R. J. Reynolds Tobacco Co., and Libby's is owned by the Nestle Corp. A similar story could be told for most of the 200-plus commodity industries that we have here in California.

Lacking the means of proper price discovery, such as a livestock auction yard, the futures market or the day-to-day sales of the fresh market vegetables industry, California producers of processing commodities are at an extreme disadvantage. H.R. 3535 will open the door to improved methods of pricing a farmer's product. By enhancing the free enterprise system, this bill will provide farmers with a more balanced bargaining position. As farmers are being confronted with fewer and larger processors and handlers, the need for an increase in the bargaining power of farmers becomes acute. As the number of processors decreases, the farmer is left with few, if any, alternative outlets or homes for his crop. Considering this, you can understand why growers feel that they are at the mercy of any available processor in their area. Due to the oligopolistic structure of the processing industry, the fair market price of the commodity is difficult to determine. Without effective bargaining at the producer level, processors have the ability to dictate the term of the contracts. The basic laws of supply and demand are being overridden.

Farmers have attempted to shift this balance of power by banding together to form bargaining associations. Unfortunately, current laws do not require processors to recognize or bargain with producer groups. H.R. 3535 will correct this situation be defining the mutual obligations of producer groups and handlers to bargain in good faith. By doing so, this legislation will remedy the most glaring deficiency in the Agricultural Fair Practice Act and inject new competition into the contract negotiation process.

It is not necessary to state the public's negative feelings towards increased bureaucracy, especially when it involves an item such as food. And, certainly, neither I nor the Farm Bureau are in any way advocating increased redtape or Government involvement in the marketing of agricultural products.

H.R. 3535 will not clutter the agricultural marketplace with needless rules and regulations. This bill will establish a framework through which an accredited association can negotiate the terms of a contract with a processor and will provide for the enforcement of this framework.

Admittedly, H.R. 3535 will impose some rules and regulations on the free-market system. However, even the most conservative economists agree that some rules are necessary to maintain an orderly marketplace. Regulatory intervention in the marketplace exists and, for the most part, has been successful.

The Packers and Stockyards Act, the Perishable Agricultural Commodities Act and the Commodity Exchange Act are all illustrations of tools used to provide uniform and beneficial marketing conditions for buyers and sellers. Yet, at the same time, the fundamental principles of supply and demand are allowed to play their part.

Although the passage of this legislation could result in more favorable prices for farm products to the farmers, it is unlikely that H.R. 3535 can be labeled an anticonsumer bill. The food dollar at the supermarket is no longer composed mainly of returns to the farmers. In most processed foods, whether frozen, dried, or canned, less than 20 percent of the market price is returned to the farmer.

The remaining 80 percent or more is attributable to the cost of processing, labor, transportation, and largely, the packaging materials. These cost inputs which constitute the vast majority of the final consumer price all have strong bargaining and negotiating procedures. Production agriculture deserves this privilege. For example, the typical 68-cent can of cling peaches returns only 12½ cents to the grower.

The point is that even if commodity prices for pears, apples, peaches, apricots, or any other perishable crop were increased at the farm level due to more effective bargaining by producers, the net effect upon consumer food prices would be minimal.

The real impact that this legislation will have is to take the roller-coaster effect of farm prices out of the industry, to stabilize the production patterns and to guarantee a continual supply of farm products for the consumer. With the capitalization cost of many of our permanent crops approaching $10,000 per acre, growers in the future must be assured of a method of pricing that is fair to them, their buyers and their consumers. Anything less will result in a decline in production of these crops.

In a recent article by the USDA, it was stated that 50 corporations dominate the processing and marketing functions of today's food industry. And I ask you, who will be more responsible to a commodity and community interest? Those farmers who are able to organize and bargain for a fair price in Modesto, Lakeport, Weed Patch, or a thousand other small towns or the corporate planners in the international headquarters in New York, Europe, or Japan?

Agriculture needs H.R. 3535 now. Thank you.

Mr. **Richmond**. Thank you, Mr. Voss. Mr. Panetta.

Mr. **Panetta**. Mr. Voss, I want to thank you for your testimony because I think you truly targeted at some of the criticisms that have been raised about H.R. 3535 and tried to address them. And I think you've done a good job.

For example, the basic problem, the arguments we have received, is in terms of the ultimate price that will have to be paid by the consumer. And, indeed, that it probably will have some impact. But one has to look at it from the farmer's point of view in the sense that the farmer is really somebody who is caught in the middle. He has labor organizations on one side that are bargaining for higher wages in order to be able to get the crops off the land. And they, in effect, go through the labor process, the strike process, and the contract process in order to get higher wages on one side. He's caught in that bind to pay higher wages so that his costs are higher on one side.

The other side, you've got processors whose labor organizations within the processing operation may very well be bargaining for higher wages and striking and negotiating. And being able to get higher prices on that side.

The farmer is really caught in the middle with absolutely no advantage in the process. And, yet, he is the person who is being pointed at and saying, "Well, gee, if you, for any reason, try to bargain for higher price, you're going to impact on the consumer." The fact is that there are already a dozen organizations that are impacting on the consumer.

The farmer, literally, has nothing except a bargaining association, a co-op, to try to represent him in that process but without any leverage, without any teeth.

Farmers don't go out on strike. Farmers don't really get into that part of the process. They are out there trying to get their crops off the land, trying to sell what they raise. So that's what really is behind H.R. 3535, to try to give that farmer at least some leverage in the process because he is taking it from all sides. That's why we're talking about this. Yes, it is going to involve some additional bureaucracy.

Nobody ought to kid anybody. Any time you build in the Department of Agriculture and the Secretary into the process, yes, it's going to involve some additional bureaucracy.

But in the end, like the Perishable Food Act and like the many other acts that try to provide some guidelines and some rules for bargaining, in the end, the fact is that bargaining is going to go on. But it's going to be based on some rules and some guidelines that are going to make it fair for both sides.

And that's all, I think, H.R. 3535 is about, to give the farmer an equal break at the bargaining table. That is all.

You addressed the issue with regard to bureaucracy very well because I think you're absolutely correct. The fact is that there are a number of rules and regulations that impact in the area, both with regard to the labor unions, as well as with regard to the processors, as well as with regard to a number of other acts that impact on the farmer. And as long as that's the case, there is no reason why the farmer ought not to be protected in that process, as well.

You've been a part of this scene for quite awhile, in tems of this area. Could you tell me why is it that the California law, even though it prohibits failure of a processor to bargain with the farmer, why doesn't it have the teeth to do the job?

Mr. Voss. I would have to reflect upon that, that in the enactment process some of the compromising between the grower community and processor or purchasing community, that some of the compromising, we had the legislation written the way it is.

I think Mr. Rominger spoke to some of the traumatic affairs that first happens when you get into bargaining, when a commodity gets involved. This has been crucial, I think, in some of the beginning stages. I think, though, in some of our bargaining associations as our bargaining process matured, we have been able to reach a degree of professionalism, if you might call it that, in the bargaining process between processors and canners.

I think there is a tightening of the teeth. They are putting teeth into the legislation that is really necessary in the early years of bargaining when neither party is really sure of the process. They are suspect of each other and it's difficult, particularly if one segment, one side has an extreme bargaining power, really, that the other one doesn't and is trying to gain a little of. In these areas, I think we need the teeth. We haven't had them in California and I think that probably that in compromising the legislations, we didn't get provisions.

Mr. PANETTA. One of the arguments is why aren't the courts sufficient to implement the requirements of the law? What has been the experience with the courts? Have the courts found that the law is not adequately stated in California, it's not clear? What's been the problem?

Mr. Voss. I think that it's been difficult, if not impossible, at least to present evidence in the eyes of the court that some of the accusations that have been made were truly made or truly done. Because most of the bargaining process, most of the failure to bargain, most of the lack of good faith is not put in writing. It's oral. It's between you and me. It's between the manager of a processing organization and a grower.

You don't have the situation to, in court, develop the testimony that would truly prove that a person is guilty and so on. Our law is you're not guilty unless you're proven guilty.

Mr. PANETTA. So what the problem is you've got to establish the intent of the processor to not negotiate with a group because they are, in fact, a co-op?

Mr. Voss. True.

Mr. PANETTA. And that is difficult to do. Thank you very much for your testimony.

Mr. RICHMOND. Mr. Glickman, any questions?

Mr. GLICKMAN. One quick question. Is your position the position of the National Farm Bureau or is this the position just of the California Farm Bureau?

Mr. Voss. It's the position of both the California and the American Farm Bureau.

Mr. GLICKMAN. At the top of your testimony, page 2, you talk about the means of proper price discovery. You seem to imply that those are evident, perhaps, in the livestock markets and, perhaps, in the grain market but not in the producers of processing commodities.

Does that mean that you would prefer that the bill would not permit bargaining in those areas where you think there are proper discovery mechanisms?

Mr. Voss. No, in no way. I feel that any commodities should be allowed the enablement of legislation and allowed to choose whether or not they voluntarily want to be involved.

I cited those three cases in that I think today there are still, at least in those areas, some price discovery mechanisms that can be satisfactory to a grower or segment of growers.

In many of our processing areas where we have only one price setter or one buyer, we're really not certain because we have no competition in the pricing system.

Mr. GLICKMAN. I tend to agree. Last year I met with some chicken farmers from Arkansas who exhibited some interest in being able to bargain with some of the processors of chickens. I just wanted to get the clarification.

Thank you very much.

Mr. RICHMOND. Mr. Nolan.

Mr. NOLAN. No questions.

Mr. RICHMOND. Thank you very much, Mr. Voss.

Mr. Voss. Thank you.

Mr. RICHMOND. Our next panel is Mr. Dominic Enrico. He is accompanied by his counsel, Mr. Robert Weir; Mr. Jack A. Hayes, a tomato grower from King City; Mr. Fred M. Stewart, tomato grower from Santa Paula; Mr. Bert Bacchetti, tomato grower from Tracy; Mr. Philip C. Herbert, tomato grower from Hollister.

Gentlemen, if you could possibly limit your oral testimony to around 5 minutes each, that will give us a little more time to ask you questions. All of your formal remarks will become part of our record.

Mr. Enrico.

STATEMENT OF DOMINIC L. ENRICO, ENRICO FARMS, INC., FIREBAUGH, CALIF., ACCOMPANIED BY ROBERT WEIR, COUNSEL, AND JACK A. HAYES, FRED M. STEWARD, BERT BACCHETTI, PHILIP C. HERBERT, TOMATO GROWERS

Mr. ENRICO. Chairman Richmond, members of the committee and staff, my name is Dominic Enrico. My brother, John, and I own a family farming corporation at Firebaugh, Fresno County, Calif., in what is known as the west side of the San Joaquin Valley. With me is one our attorneys, John Boone, of Boone, Knudsen & Martin in San Francisco.

I appreciate the opportunity to appear before your committee at this time because I was unable to do so last summer in Washington, when our tomato harvest was just getting underway. At that time I did address a letter to Chairman Richmond which I asked to be made a part of the committee record.

In addition to detailing some of the problems I have had as an active member of a producer bargaining association, I submitted four specific additions and amendments to H.R. 3535 as it was introduced by Congressman Panetta. Two new subparagraphs 8 and 9 are suggested for Section 4: Unfair Practices; a new subdivision E is suggested for Section 6: Accreditation of Associations of Producers; an amendment is suggested to the preamble of Section 13: Civil Remedies.

These recommendations were prepared with the assistance of our attorneys and I would appreciate the Chair's permission to have Mr. Boone read these brief items into the record at this time for any questions the members may have during today's hearing.

Mr. RICHMOND. Without objection.

Mr. Boone.

Mr. PANETTA. Would it perhaps be easier, Mr. Chairman, if he could just simply submit those comments for the record?

Mr. RICHMOND. Surely.

Mr. ENRICO. Each of these suggestions came directly from my own frustrating and costly experience while a producer of canning tomatoes and a member and director of California Tomato Growers Association.

Mr. Boone and I will be pleased to review with the committee the conditions that led to these additions to the bill. They are not unique to the CTGA or our personal situation and will occur again in other bargaining associations until corrected by law.

As an active member of my voluntary grower association and as a personal contribution to the value of good faith bargaining for producers and handlers alike, I enthusiastically participated in organizing the necessary amount of production in my CTGA District 10 to qualify it for exclusive bargaining representation for the 1973 crop year.

From that date through 1975, Mr. Chairman, the stuff that hit the fan was not tomatoes.

I don't deny that I can be outspoken and determined when I believe that I and my fellow growers are being treated unfairly by open violation of the laws, State and Federal, enacted to assure fair bargaining and when I cannot get direct and honest answers to direct and sincerely put questions pertaining to the principles and practices of my association.

Here are just some of the things that happened to me and our tomato farming operation that I consider to be a direct result of my bargaining activities.

H. J. Heinz Co., in November 1972, refused to contract with Enrico Farms for 1973, with their instructions coming from "higher up" than the field department. I received very negative response from the legal counsel of my association when I asked about protection under the existing law.

In June 1975, Contadina Division of Carnation Co. refused to contract with Enrico Farms because we would not give them a verbal acreage commitment prior to price setting during long and difficult bargaining negotiations. Again, the advice I received from the CTGA legal counsel was weak and noncommittal. We ended up discing under 7,000 tons of tomatoes that with better bargaining conditions should have gone to Contadina, a processor that we had contracted with since 1971.

In November 1975, by this time, discouraged by lack of support from our association, we filed on our own a complaint in Federal court for injunctive relief under the Fair Agricultural Practices

Act of 1967, along with several other counts of punitive action by the processors. The injunction was denied.

In December 1975, California Canners & Growers, a cooperative, refused to contract with Enrico Farms even though the field department reassured us of a contract. We had been selling to them the previous year as a nonmember grower and they were not named in our November compliant. Here, we were threatened with serious consequences if we did not withdraw our action.

I believe these acts and many others too numerous and some maybe too devious to list here, were in direct response to my successful bargaining efforts and part of a calculated effort to cripple or destroy fair crop bargaining wherever it begins to become effective.

Now would it greatly surprise the committee to hear that the legal counsel for our association, California Tomato Growers Association, to whom I looked for guidance and who should have been giving full support to the organization's bargaining efforts, was a member of the law firm at the same time representing Libby, McNeil & Libby, Tillie Lewis Foods, and California Canners & Growers?

Before proceeding further I want to make sure the committee is aware that Enrico Farms still has this complaint pending in the Fresno Eastern District Federal Court, pending since November 1975, against 20-plus proprietary handlers of canning tomatoes in which we allege violation of the Agricultural Fair Practices Act of 1967, and the Clayton and Sherman Acts. We are still pressing for twice-denied class action certification. Considering the track time, expense, and frustration of antitrust litigation, this was a step we took only after other remedies were closed to us, one by one.

We have had a lot of "go to it, Domenic," support from fellow growers but most are properly fearful of retaliation from one source or another if they step forward for legal relief from their common problems. Only two other canning tomato growers have filed lawsuits similar to ours and they are also pending.

Having said this, I want to assure the committee that I am not here to try our lawsuit before this legislative body. I am here to make our experience available to the committee and to give my support to new and improved Federal and State-by-State laws that will give some regulated equity to the processing crop farmers, committed to more and more heavy' capitalization for survival, with a decreasing number of processors that are getting larger and larger.

Existing antitrust and agricultural bargaining laws, if stengthened and enforced, should protect individual producers and their voluntary associations. The case of John H. Weir, a dairy farmer in Ohio, versus Lawson Dairy, is an instance where a producer made full use of the Fair Agricultural Practices Act and succeeded.

In order to work, a law must be used and many growers and their associations are not fully informed of their rights. This and much more valuable information on the history and practice of crop bargaining is contained in a Ph. D. dissertation by Mahlon George Lang at Michigan State University, 1977.

I do want to call the committee's particular attention to our recommended subdivision E of section 6 dealing with the serious problem of conflict of interest within the bargaining association, itself. Grower-processor cooperatives are becoming a more complex and powerful segment of the food marketing industry. Their governing bodies have their own methods of calculating member-grower benefits that do not necessarily coincide with the marketing conditions created by the large corporate food companies who are still the major home for most processing crops.

It is essential that H.R. 3535 or any other Federal bargaining law resulting from it provide specific guidelines to prevent undue influence by cooperatives to artificially depress the negotiated base price in order to enhance their marketing and fiscal positions.

Although we assume honesty in most voluntary dealings and Congress cannot legislate morality, specific language in the bill is required to remove the temptation of individuals representing cooperatives or proprietary interests from internally influencing price bargaining negotiations.

A case in point is the CTGA where, for several years, the principal negotiator is also a vice president of a major processing cooperative. Their bargaining has deteriorated to where it was not even attempted this year.

Since my letter of July 17, 1979, to the committee, my brother and I have stopped growing tomatoes. We have resigned from the cooperative that was the last remaining home for our crop and have finally disposed of our harvesting equipment. Unless it is only my imagination working overtime, I can only come to the conclusion that whatever forces set out to punish me for my efforts in bargaining have succeeded so far. For all practical purposes, we have been denied the right to grow and sell canning tomatoes.

Jack Pickett, respected editor of "California Farmer," began his editorial in the August 11, 1979, issue with the following statement: "There are some strange things happening in the tomato industry. This vegetable could very well set the path for all processed fruits and vegetables."

Not all of these strange things may be beneficial to the farmer and do deserve the attention of everybody responsible for the future of American agriculture and our food supply.

Thank you, Mr. Chairman, and members of the committee, for the opportunity to make this statement and for your interest.

Mr. RICHMOND. Thank you, Mr. Enrico.

If you would stand by, we would like very much to ask questions after we've heard from the entire panel.

Our next witness is Mr. Jack A. Hayes, King City, Calif.

STATEMENT OF JACK A. HAYES, VICE PRESIDENT, CALIFORNIA TOMATO GROWERS ASSOCIATION

Mr. HAYES. Thank you, Mr. Chairman.

My name is Jack Hayes and I am a diversified grower in the King City area of Monterey County where I raise tomatoes and other row crops.

I am also vice president of bargaining for California Tomato Growers Association and have headed the association's bargaining activities since 1974, when we began formal bargaining for price and terms of delivery for our members' processing tomato tonnage.

I believe our record in price bargaining has been an outstanding one but our bargaining activities certainly have not been without their difficulties, even though we represent the vast majority of the tomato growers in this State. A few national branded canners dominate the California processed tomato industry and their ability to influence raw product prices is very great in comparison to that of the growers.

In 1978, realizing that the California industry was badly in need of some measure of stability in contracting for the crop, the association undertook to work with canners on a term contract for 1979, that would specify methods of determining price and contract terms for a 3-year period.

One of the major processors signed such a contract with the association. But one of the others decided to circumvent the effort and we were unable to muster sufficient support in the industry to achieve association goals. In 1979, we again undertook to negotiate a term contract for 1980, which included annual bargaining with binding arbitration on a last and best offer basis.

Unfortunately, California processors had overpacked the 1979 crop and with large carryovers of stock, we faced a buyer's market. Although the processors met with us on a regular basis to discuss pricing and contract terms, as required under the present bargaining law, we were unable to make any progress on 1980 prices or on a term contract. We had been negotiating since July 1979, and in mid-December some of the major processors presented their version of a 1980 contract, including prices sharply reduced from those we had been seeking. They told the association board that the price and terms were not negotiable and that they would begin contacting both member and nonmember growers immediately to sign up their tonnage requirements for 1980.

The interest of California Tomato Growers Association in H.R. 3535 lies in the provisions for mediation and arbitration services of the Secretary of Agriculture and the resolution of impasses which may be reached in the bargaining process.

A grower looking for a home for his production is under extreme pressure to secure a contract before he starts seeding his acreage, which in the case of the southern production areas in California begins in January. This year, knowing that the canners' intentions were to reduce their contracted acreage, competition to secure a contract became very great and our members urged us to come to some type of agreement with the canners so they could sign a contract instead of losing acreage to nonmember growers. We have since signed contracts with most of the processors in the State who agreed to our delivery terms, but without specifying an association price for 1980.

Had H.R. 3535 been available to us, we could have requested binding arbitration of our price differences and come to an equitable solution rather than being subjected to unilateral action by the processors.

I sincerely request the passage of H.R. 3535, not only for California's tomato growers, but for all growers in the United States who face problems similar to ours.

Thank you.

Mr. RICHMOND. Thank you, Mr. Hayes.

Mr. Fred M. Stewart of Santa Paula, Calif.

STATEMENT OF FRED M. STEWART, PRESIDENT, CALIFORNIA TOMATO GROWERS ASSOCIATION

Mr. STEWART. Thank you, Mr. Chairman.

Mr. Chairman, and members of the hearing panel, my name is Fred Stewart. I reside in Ventura County where I grow tomatoes, row crops, and citrus. I am before you in support of H.R. 3535. I am president of the California Tomato Growers Association and have previously served as vice president and treasurer of the association. I have been a member of the association for many years and have been active in the affairs of this association on behalf of tomato growers.

The legislation provided in H.R. 3535 is essential, not only to maintain a fair bargaining process between the growers and canners, but is equally necessary to establish a certification process which allows a grower association to achieve recognition as a bargaining agent for its members.

The California Tomato Growers Association was organized in 1957, and was well-established as a service and information organization for tomato growers prior to undertaking efforts to bargain on behalf of its growers for the price and terms of delivery to processors. Despite the association's wide recognition for over 20 years as a representative of the tomato growers, the association still encounters great difficulty in achieving recognition from the processors as a bargaining agent for our members.

Tomatoes are, by far, the largest California processing crop. A total of 6.4 million tons of tomatoes were processed in the State's canneries in 1979, which represents about 85 percent of the entire U.S. supply of processed tomato products.

The tomato processing industry accounts for about $1.4 billion in the California economy during 1979, and the economic well-being of the tomato industry has a substantial effect upon all the State's processing fruit or vegetable crops. The tomato growers in California have the capability to grow and harvest 10 million tons of tomatoes each year. California canners have the capacity to process about 8 million tons annually. And the current market demand nationally is about 6 million tons of tomatoes. As a result there has been a continuing potential on the part of both growers and processors for significant overproduction in excess of the market demand for tomato products. Thus the tomato industry has been confronted for several years with a continued need to restrain excess contracting by processors and excess production by growers in order to maintain a measure of stability in the industry.

It was because of the lack of such stability that the association undertook formal bargaining with the processors to establish reasonable prices and terms of delivery for its growers. The bargaining efforts began in 1970, but it was not until 4 years later in 1974, that the association was able to achieve a position as a bargaining agent for its members. Processors have many subtle methods to circumvent the bargaining efforts of growers, including the offer of a temporary token price increase aimed at forestalling an organized bargaining effort.

This tactic was used to undermine the bargaining efforts of the California Tomato Growers Association during 1970. In that year the processors began contracting at the earliest date in history for the following year's crop and offered a price increase of $3 per ton above the current price for 1970. Which, incidentally, was $25 per ton.

Once the association's efforts for organized bargaining were frustrated, however, no further price increases were offered and the price remained at the $28-per-ton figure for 2 years.

In 1973, the growers again undertook to organize bargaining through the association and began signing bargaining agreements which legally restricted the members from signing contracts with a processor until such time as the processor bargained with and reached an agreement with the association on prices and terms of contract. Processors again utilized the tactic of offering a price increase to growers as an inducement not to sign bargaining agreements with the association.

Although the processors' offers slowed the signing of bargaining agreements, many growers had come to realize that organized bargaining by the association would be required in order to protect the growers' price and obtain a reasonable profit.

By 1974, the processors realized the association and its members were determined to establish a voice in the pricing of their product through bargaining. The processors then attempted to obtain their tomato contracts from growers outside the association membership. Fortunately, 1974 was an unusually good year for alternative crops to tomatoes and the processors were unable to obtain their tomato requirements without dealing with the association members and paying the increased price bargained for by the association.

Thus, after 4 years' effort, the association finally achieved formal recognition as a bargaining agent for its growers.

Our purpose in entering this testimony today is not to berate the tomato processors who are our only customers for our members' tomato crops. The resistance by the processors to bargain with the association and to yield a measure of their economic control over tomatoes, which are the most important processing crop, is understandable, even though it is not commendable.

Rather, this testimony is intended to point out the many difficulties that are encountered by an agricultural association in achieving recognition as a bargaining agent for its members.

Both growers and processors share a common purpose and goal in providing the food required to feed this Nation. And, in many respects, the growers and processors are partners in accomplishing this objective. The association is aware of the problems facing the processors in maintaining a profitable position on their fruit and vegetable packs. The association, however, must demand that the processors also take notice and be aware of the increasing costs and financial difficulties facing the growers. The grower must be allowed reasonable prices and a fair profit on his crops. The only effective way to protect the grower is through an equal voice with the processor in bargaining. In the certification process established by H.R. 3535, it's essential to provide recognition for the growers' bargaining agent.

It is my understanding that hearings on this bill are being held only in California. Each year representatives of the tomato grower associations attend a national conference for bargaining association members. We have learned at these conferences that the problems of bargaining by grower organizations are not unique to California, but are widespread throughout the Nation. We would like to request that further hearings by this committee be scheduled in other agricultural areas of the United States in order for the committee to determine the support of its bill by other commodity bargaining associations.

We would further request that the committee leave the record open for testimony for a specified period of time in order that others may submit written testimony.

.On behalf of the California Tomato Growers Association, we thank you for your concern and attention to the problems of agriculture. And we urge your support of H.R. 3535.

Mr. Richmond. Thank you, Mr. Stewart.

Mr. Bert Bacchetti, Tracy, Calif.

STATEMENT OF BERT BACCHETTI, DIRECTOR AND VICE PRESIDENT, CALIFORNIA TOMATO GROWERS ASSOCIATION

Mr. Bacchetti. My name is Bert Bacchetti and I farm in the Tracy area of San Joaquin County, where I grow tomatoes, sugar beets, alfalfa, and grain crops. I am also director and vice president of the California Tomato Growers Association and serve as an assistant in bargaining activities of the association.

I would like to take a few minutes to discuss some of the economic pressures under which the growers operate in their dealing with canners. For 9 years, I grew tomatoes for a major tomato processor and, at one time, grew as many as 350 acres of tomatoes for this processor. When I began growing tomatoes for them, they were California-based and had grown from a small local operation to major processor status. They were subsequently purchased by a conglomerate which installed an eastern money manager, who had little understanding of the California tomato business, to run the operations.

Association members, who are prohibited from signing a contract with a processor until a processor comes to an agreement with the association, apparently were not the conglomerate's idea of the ideal raw product supplier. A campaign began to replace association member growers with nonmember growers with whom the processor could deal directly without having to go through the association. As an officer and member of the tomato association, my acreage contracts were cut each year until 1976. I was offered a contract for only 60 acres.

Since this is an uneconomical unit in my operation, I refused to grow for this processor and have not done so since that time. And I am not the only association member to whom this has happened. Some of my neighboring association growers also were subjected to the same treatment.

In October 1976, the association filed suit with this processor, alleging unfair trade practices, including refusing to negotiate in good faith with the association, refusing to offer contracts to the association members with the same prices, quantities, and terms as those offered to nonmembers, discrimination against tomato association members and encouragement of association members to withdraw from the association in order to gain contracts.

The complaint was filed under section 54431 of the Agricultural Code of California, since the association did not feel that the Federal agricultural bargaining law currently in force offered sufficient prospects of timely relief.

The suit is still in court. I am sure that you are aware that proving discrimination is extremely difficult. However, the processor had signed early contracts with nonmember growers specifying a $45-per-ton price or the price to be subsequently determined by the processors and the association. This was done with the knowledge that association members could not sign such a contract. The processor's actions resulted in severe economic pressure on members as they saw nonmember growers obtaining contracts for tomato acreage. Some of our former members have withdrawn from the association in order to be able to grow for this processor, others have grown tomatoes for this processor under fictitious names and others have been encouraged by the processor to breach their association contracts. Both the association and its members have been damaged by this processor's actions.

Had we had the provisions of H.R. 3535 available to us, our differences with the processor could have been resolved under the mediation and arbitration provisions. Having no such provisions, the association suit is still in court and the association is also pursuing the matter with the regulatory bodies of the California Department of Agriculture.

Since approximately 4 years have passed and many thousands of dollars have been spent by the association pursuing the matter, it is my belief that growers and their associations are desperately in need of a better method of resolving disputes with the buyers than is presently available to them. H.R. 3535 would provide such methods. I urge you to support the bill.

Thank you.

Mr. Richmond. Thank you, Mr. Bacchetti.

Mr. Philip C. Herbert, Hollister, Calif.

STATEMENT OF PHILIP C. HERBERT, DIRECTOR, CALIFORNIA TOMATO GROWERS ASSOCIATION

Mr. Herbert. Thank you, Mr. Chairman. Good morning, gentlemen.

My name is Phil Herbert and I farm in San Benito County where I grow tomatoes and other vegetables and field crops. I am a director of California Tomato Growers Association and my tomato production is marketed to Tri/Valley Growers, a grower processing and marketing cooperative. Although I am aware that the provisions of H.R. 3535 do not apply to cooperatives such as Tri/Valley Growers, I would like to take a few minutes to suggest to this committee some of the reasons why a strong bargaining association is important to the member of a processing cooperative.

Tri/Valley Growers is a single pool cooperative, as are the other processing cooperatives in California. Although the processing cooperative does not become involved in the bargaining process, the eventual price established by the bargaining association for a particular commodity is customarily accepted as the established value for that commodity by the processing cooperatives. Payments to the grower member are based on these established values.

Most California commodities are not presently represented by a bargaining association and, in the absence of a bargaining association, the price paid by commercial buyers for a particular commodity is less than what might be economically justified by the profitability of the commodity to the commercial buyer. It then becomes the responsibility of the processing cooperative to adjust the price paid to its members or, in order to remain competitive with the commercial buyers of the commodity, to also pay its members less than what might be an economically justified price. Obviously this creates dissension within the cooperative, as well as inequities.

As a grower, I prefer that my commodity be represented by a strong bargaining association to establish a price for my production. I believe that H.R. 3535 will assist all growers in their ability for form associations for their commodities and to conduct the business of such associations, which is directed toward establishing an equitable value for the commodity.

Individual growers have no other method of influencing the price they receive for their crops. The individual grower must pay the retail price for everything he buys to produce a crop, yet he is severely handicapped in his ability to sell his crop at a figure which represents the cost of production, plus a modest profit. When processing crops are ready for harvest, the grower cannot store them and wait for the price to go up. He must find a buyer for the crops or see them rot on the trees or in the field. As an individual, this puts him completely at the mercy of the buyer and the buyer is merciless under these conditions. Some means of influencing price must be introduced and grower bargaining associations are the only realistic vehicle open to the individual grower.

I don't believe in farmer strikes but I can certainly understand and sympathize with the problems and frustrations that lead up to such actions on the part of farmers.

The present canning industry is dominated by corporate and conglomerate firms whose principal concern is the profit and loss sheet. I might add that this is also the grower's principal concern. As a grower, I find it difficult to understand the opposition of these large proprietary canneries to the modest provisions of H.R. 3535, which is only a weak attempt to give groups of growers some input into what they will receive.

The bill certainly gives us no power to force a price upon the buyer. It merely gives grower associations a better opportunity to bargain with the large buyers who hold great economic power over their raw product suppliers.

As a member of California Tomato Growers Association, I strongly support H.R. 3535 and urge its passage in Congress.

Mr. RICHMOND. Than, you, Mr. Herbert.

Mr. Enrico, in your testimony you indicated that you are out of the tomato business completely. In your testimony you indicated that you and your brother are no longer growing tomatoes.

Mr. ENRICO. That's correct.

Mr. RICHMOND. What are you growing now?

Mr. **Enrico**. Cotton, some grain, and lima beans.

Mr. **Richmond**. In other words, you believed it was not sufficiently profitable to stay in the tomato business?

Mr. **Enrico**. No, I couldn't get anymore contracts from the independents which I was exclusively there for years, with independents.

There was a period of time there when we were being harassed one way or another, whether it was quotas or what, but I started growing for some of the cooperatives on the commercial contract and I was finally able to buy some acreage in the Tri/Valley. I grew for Tri/Valley and that was my last contract I had with them. But I couldn't afford to stay with them because they could never earn the base price.

Mr. **Richmond**. Are many other members of the California Tomato Growers Association going out of the tomato business or curtailing their production?

Mr. **Enrico**. There are some who have, but I will let them speak.

Mr. **Stewart**. We're cutting back this year, a lot of us, because we were unable to negotiate a reasonable price this year, and many growers, members of the association and other members, have found that growing tomatoes at the price offered on a take-it-or-leave-it basis this year by the canneries was just not profitable. So many growers, including myself, have cut back on their growing of processing tomatoes, yes.

Mr. **Richmond**. How much of your business is fresh vine-ripened tomatoes for the consumer market?

Mr. **Stewart**. The California Tomato Growers Association represents strictly processing tomatoes. Some of us, I, for instance, happen to grow some fresh market tomatoes, but a very small percentage in relation to the processing tomatoes. But this association is solely involved in the processing tomato industry.

Mr. **Richmond**. Now, Mr. Stewart, you grow tomatoes. Do you grow them all year around?

Mr. **Stewart**. No, we are planting right now and will be delivering fresh market tomatoes for approximately 2 months during the summer.

Mr. **Richmond**. Thank you.

Mr. Panetta.

Mr. **Panetta**. Thank you, Mr. Chairman.

I will just point out for the benefit of my colleagues that two of the people testifying, Mr. Jack Hayes and Mr. Phil Herbert, are from the 16th Congressional District, and I just want to make that note. I appreciate both of you coming and all of the other members of the panel. You're obviously people who are familar with the basic problems that we are dealing with in this area.

Let me ask any of you who are knowledgeable, what is the percentage of tomato growers who are members of co-op associations in California?

Mr. **Stewart**. Are you asking members of co-op marketing associations or members of a California Tomato Growers Association?

Mr. **Panetta**. Whatever you know the answer to.

Mr. **Stewart**. At the present time, members of the California Tomato Growers Association represent about 60 percent of the processing tomato industry.

Mr. Panetta. I take it most of the contracts are all set for this year, is that correct?

Mr. Stewart. Principally, yes.

Mr. Panetta. As far as the association, that you've negotiated, what did you negotiate on a per-ton basis?

Mr. Stewart. The association only negotiated one actual price this year and that was with the Campbell Soup Co. at $50 a ton. The other, we could not reach an agreeable price with the other processors in the State and have only agreed to the terms of contract with other processors.

Mr. Panetta. So you have one contract, then, at $50 a ton?

Mr. Stewart. That is right.

Mr. Panetta. As far as individual growers whose contracts have been made with processors, do you have any idea what those contracts run?

Mr. Stewart. They range all over the scale. Many of them are sliding-scale contracts that might go as low as $42 a ton and may go up as high as $58 a ton, depending on the amount of process tomatoes that are actually processed at the end of the year.

Mr. Panetta. Do you track those individual contracts in any way? Is there any way to do that? Do you have any way of gaging what individual contracts are being made with regard to particular growers?

Mr. Stewart. In general, yes. The association keeps close track of the price structure. Most of the State's processors have signed terms of contract agreements with the association this year. And we do track the price structure, yes.

Mr. Panetta. I think there was some testimony that there has been a pattern whereby sometimes processors have engaged in providing higher prices to growers as a way to keep them away from the bargaining association.

Mr. Stewart. There have been attempts in the past years when we've bargained, early in our bargaining process, the processor offered higher prices, a higher priced contract than was being negotiated by the association in order to try to get growers to not join and to not sign a bargaining association agreement; yes.

Mr. Panetta. Now when you sit down at the bargaining table and you're representing about 50 percent of the growers, what kind of leverage do you use? What do you say? "We've got 60 percent of the growers. You need to have tomatoes." And I guess when there is a big tomato year, it's very difficult to exercise any kind of leverage.

Mr. Stewart. I will defer that question to Mr. Hayes.

Mr. Hayes. I will endeavor to answer that.

Actually, prior to this year, we represented about 70 percent of the growers. And we've talking more than just base price/terms. We're talking in delivery terms, improved inspection, hauling problems, the whole gamut of the grower-processor problems at harvest time.

So we furnish many services in addition to just the base price. Our agreement stands between the grower and the processor until we reach agreement or unless we turn them loose, as we did this year.

So that it makes it very difficult for a processor to plan exactly where he is until he reaches agreement. And we've been, I think, realistic people and have reached satisfactory agreement for the first 6 years of our bargaining history.

But through that umbrella that we were furnishing to members and nonmembers, as well as an umbrella to the smaller canners, many games started to be played, particularly when you hit into an oversupply situation. This year, with all the games that were played, all the spinoffs from our basic agreement, both by processor and some growers, it became extremely difficult in a buyer's market to establish a satisfactory base price. We did reach agreement on all other terms of the contract with essentially all the processors. But we have a price range of from $40 a ton up, where our base price a year ago was $56.50. That was a reasonable price for 1979. The prices offered this year are well below growers' costs of production.

Mr. **Panetta**. All of you gentlemen have testified in support of H.R. 3535. You all recognize that we're not talking about necessarily getting higher prices? You may very well face a situation where an arbitrator will come in, if you reach that point, and say, "We think that this price is what the facts show to be a fair price," and so, in fact, what we're doing with H.R. 3535 is simply providing the rules of sitting down at the table so that there is negotiation on a fair basis. And I take it that all of you understand that that's what we're talking about.

Mr. **Stewart**. Yes; we certainly understand that and that's really what we're interested in. We're really interested in providing a structured arena in which a fair price to both parties can be established.

Mr. **Panetta**. Thank You.

Mr. **Richmond**. Thank you, Mr. Panetta.

Mr. Glickman.

Mr. **Glickman**. No questions.

Mr. **Richmond**. Mr. Nolan.

Mr. **Nolan**. No questions.

Mr. **Richmond**. Mr. Stewart, at $50 a ton, what's the production per acre? How many tons of tomatoes per acre do you produce?

Mr. **Stewart**. Last year was the highest average in the State's history, 25.4 tons per acre. That's an average yield and that probably went all the way from 15 tons to 40 tons. But the average was 25.4.

Mr. **Richmond**. What's your cost-per-acre?

Mr. **Stewart**. The cost per acre, of course, varies all up and down the State but because of the variation in land rentals and a lot of things, but the cost per acre certainly is close to $1,000 an acre and that's before harvest. By the time you put harvest on top of that, you have another $300 to $400 an acre.

Mr. **Richmond**. So that at $50 a ton, you actually lose $5 to $10.

Mr. **Stewart**. The majority of the growers in the State will lose money at the current price structure, yes.

Mr. **Richmond**. Are these tomatoes harvested mechanically or by hand?

Mr. **Stewart**. They are all harvested by machines.

Mr. **Richmond**. Are they harvested green?

Mr. STEWART. No, they are harvested ripe. The fresh market tomatoes are harvested green. The processing tomatoes are all harvested completely ripe.

Mr. RICHMOND. And the mechanical harvester can harvest ripe tomatoes?

Mr. STEWART. Yes, sir. We have no problem with the harvesting area, as far as the methods of harvesting.

Of course, one of the problems is that we are now harvested by machines and this industry has gone from a labor-intense industry to a capital-intense industry which locks the grower into a very high capital cost. So it's extremely important that we recognize this in bargaining for price.

Mr. RICHMOND. Thank you very much, gentlemen. We appreciate your coming before us.

Our next panel includes Mr. N. J. Fortenberry, executive vice president of the Western Cotton Shippers Association of Fresno, Calif.; Mr. Richard Nock, executive vice president, Livestock Marketing Association, Templeton, Calif.; Mr. William Thomas, executive vice president, California Food Producers, Sacramento, Calif.; Mr Willoughby Houk, cotton and grain grower, Firebaugh, Calif.; and Mr. Bill Taylor, president, Vegetable Bargaining Association, King City, Calif. Mr. Taylor is accompanied by Mr. Lawrence Porter, the treasurer of the Vegetable Bargaining Association.

Mr. SHWARTS. Mr. Chairman, Mr. N. J. Fortenberry, the executive vice president of Western Cotton Shippers Association, is unable to be present.

STATEMENT OF ALVIN L. SHWARTS, PRESIDENT, WESTERN COTTON SHIPPERS ASSOCIATION, FRESNO, CALIF.

Mr. SHWARTS. Mr. Chairman, my name is Alvin L. Shwarts of Phoenix, Ariz. I am president of the Western Cotton Shippers Association. I am accompanied by counsel, Mr. Neil P. Dillon of Washington, D.C.

Mr. Chairman, in the interest of saving time, I will not read my entire statement but I request that it appear in the record in its entirety.

Mr. RICHMOND. Without objection, so ordered.

[The prepared statement of Mr. Shwarts follows:]

STATEMENT OF
WESTERN COTTON SHIPPERS ASSOCIATION
PRESENTED TO
SUBCOMMITTEE ON DOMESTIC MARKETING, CONSUMER RELATIONS AND NUTRITION
COMMITTEE ON AGRICULTURE, U.S. HOUSE OF REPRESENTATIVES
ON H.R. 3535
THE AGRICULTURAL BARGAINING ACT
SACRAMENTO, CALIFORNIA
APRIL 18, 1980

Mr. Chairman, I am Alvin L. Shwarts of Phoenix, Arizona, President of the Western Cotton Shippers Association. I am accompanied by A.J. Fortenberry of Fresno, California, the Association's Executive Vice President & Secretary. I appear today in opposition to H.R. 3535, the Agricultural Bargaining Act.

INTEREST OF WESTERN COTTON SHIPPERS ASSOCIATION

The Western Cotton Shippers Association was founded in 1923 and is basically comprised of merchants, shippers and exporters of raw cotton doing business in District 6 of Texas, Arizona, New Mexico, and California.

In the 1979-80 cotton season the 49 member firms of the WCSA handled approximately one half of the 4.9 million bales of Upland and Pima cotton produced in the Western States.

The members of our Association are subject to the requirement of this legislation since their business activities are encompassed by the definition of "handler" in Section 3 (c) in that they engage in:

1) The acquisition of (cotton) agricultural products from producers or associations of producers for processing or sales;

2) They grade and handle the cotton, arrange for packaging (rebaleing or recompression), storage, and shipment to the textile mills;

3) They contract or negotiate contracts and make other arrangements written and oral with producers or associations of producers with respect to production and or marketing of cotton; and

4) In some instances they act as agent or broker for handlers in the performance of the acts specified above.

COTTON INDUSTRY OPPOSED TO FARM BARGAINING CONCEPT

The Western Cotton Shippers Association has historically opposed the adoption of devices that would serve to interfere with the natural forces of the marketplace, a market that unlike most other agricultural commodities is faced with strong and determined competition from domestic and foreign produced synthetic fibers and foreign grown cotton.

At the Subcommittee hearings in Washington in July 1979 all segments of the industry submitted testimony voicing objection to this legislation including the National Cotton Council of America, National Cotton Seed Products Association, the Texas Independent Ginners Association, the Cotton Warehouse Association of America, and the American Cotton Shippers Association.

AGRICULTURAL PRODUCERS ADEQUATELY PROTECTED BY EXISTING LAW

At the outset, I should emphasize that our organization is not opposed to the right of farmers to form agricultural cooperatives or bargaining associations. Public policy has long recognized the desirability of safeguarding the freedom of farmers and other individuals or groups to form together in cooperative associations or unions; and we believe it is equally important to safeguard the freedom of the farmers or working people not to join a cooperative bargaining association or union, and to deal with non-cooperative organizations whenever they believe their interest is better served thereby.

The Capper-Volstead Act and Section 6 of the Clayton Act permit farmers to join cooperative associations and to sell their products collectively, free of the basic antitrust prohibition against joint action on the part of competing sellers. Every farmer thus has a choice -- not enjoyed by other business enterprises -- to sell his or her production independently, or to band together with other farmers for the joint bargaining and sale of their products.

The right to organize is in itself a powerful weapon, and the knowledge of this power has provided an adequate insurance policy for the cotton farmer.

Given these rights, the great majority of U.S. cotton producers (approximately 75%) have chosen to process and market their cotton through independent ginners, warehouseman and merchants, who in turn, have invested hundreds of millions of dollars in facilities to better serve the needs of their independent producer customers.

BARGAINING FOR COTTON WILL DISRUPT A SUCCESSFUL AND COMPETITIVE MARKET SYSTEM AND STIMULATE THE USE OF FOREIGN COTTON AND SYNTHETIC FIBER

Collective bargaining has no place in the context of the cotton marketing system. Its adoption will disrupt the system and lead to the increased use of synthetic fibers and foreign grown cotton.

Over half of the cotton produced in the U.S. is consumed in export markets. Our foreign markets have expanded, but our domestic markets have contracted because of massive displacement by synthetic fibers which now account for approximately 75% of the total U.S. fiber market This is a role reversal for cotton -- for only 20 years ago we enjoyed almost 75% of the U.S. fiber market.

The cotton industry is working hard to win back these markets. Our export expansion program has been aided substantially by the market-oriented philosophy of legislation enacted since 1970.

Increased prices through bargaining, absent export subsidies, will cost us our export markets. Increased prices on the domestic front will only stimulate additional use of synthetics.

The cotton market is world wide. It reacts almost immediately t a drought in northeast Brazil, a hailstorm in Lubbock, or to heavy rains in Pakistan. Its pricing structure is complex, governed by price determinations which must consider 532 different combinations of grades and staple lengths in addition to micronaire and pressley factors. It has an active futures market complimented by spot markets in various territories of the cotton belt which reflect the prices received in the most recent trades.

Cotton farmers market their cotton through cooperative marketing asociations, Commodity Credit Corporation, cotton gins, compresses or warehouses, F.O.B. merchants, shippers and textile mill buyers. These competing forces provide the farmer with a choice of market alternatives and resulting competitive prices for his cotton.

The cotton market will more than likely have these reactions to a system encompassing farm bargaining:

I. Return to Two Price System

The application of collective bargaining to the marketing of raw cotton must contemplate most seriously a return to the system of two-price cotton. As bargaining demands increase they are likely to take the price of U.S. cotton above the world market price. To maintain exports a subsidy will be necessary. To maintain domestic markets an offsetting price system is dictated. Such a system was utilized briefly in the 1960's. It proved toocostly, too contraversal, was unacceptable to the U.S. textile industry and was dispatched by Congress in 1964.

II. Phase Out of Price Support System

Producers of commodities such as cotton, wheat and feed grains have no desire to disband the present price support system. The successful application of bargaining to those commodities could provide the needed emphasis for those who oppose these programs. If, by chance, bargaining succeeded, would there be a need for continuing the present price support system?

III. Stimulate Increased Use of Synthetic Fibers

In 1967 the mere threat of a short crop resulted in prices that were too high for the consuming market to absorb. The results were devasting, cotton consumption suffered its most severe reduction in history -- total U.S. cotton use dropping from 49.2% in 1967 to 42.3% in 1968. Since that time we have lost almost half of the 1968 market share.

Addressing the subject of market losses, Professor Wallace Barr of Ohio State University noted that:

> "Encouraging the development and use of substitutes may be one of the most serious pitfalls to aggressive bargaining. Substitutes definitely limit the influence a bargaining association can have on price. Butter already has a readily available substitute; urea can be substituted for soybean meal; synthetics are replacing natural fibers...." (emphasis added)
>
> "Recognition needs to be given to the state of substitute technology. Meat substitute technology exists. If meat prices were bargained so aggressively as to encourage the production of meat substitutes, thus lowering the cost of their production, a substantial market loss could occur." 1/

1/ Bargaining in Agriculture, University of Missouri-Extension Division - C911 - June 1971, at page 49.

IV. Regional Concentrations of Power Forcing Shifts in Production Patterns

Certain areas of the cotton belt are more adaptive to centralized collective bargaining because of the high concentration of producers in given geographical locations. The San Joaquin Valley of California, Arizona, and the High Plains areas of Texas and Oklahoma stand to gain the most from a collective bargaining system. Within these areas are the largest farms, some of the best cotton land, and the most efficient producers who together account for approximately 70% of total U.S. cotton production.

What good does collective bargaining do for the 80,000 cotton farmers widely dispersed in the less efficient growing areas of the other twelve cotton belt states when the more powerfully organized collective bargaining associations, with more cotton to sell, can reduce their market share to levels that will dictate shifts to the production of other crops.

V. Aggressive Bargaining Could Result in Production Shifts

Professor Barr pointed out the reality of this danger, noting that:

> "A different kind of market loss can result when only part of the production of a single commodity is organized for bargaining. This could be the case where potato producers in one area of the country bargain and those elsewhere do not. If the bargaining were overly aggressive, buyers would shift to other supplying areas. This could mean closing plants and

> shifting operations to the other producing regions. A loss of market to one set of producers, in these circumstances, is a gain to another." 2/

This situation is more likely to affect the cotton producers in the less efficient areas. If these producers do organize they must be careful not to demand prices which would send buyers to the more powerful collective bargaining cooperatives. Being too timid would most likely be rewarded only by fill-in business, and gradually the association would die for lack of strength in a market place which will have shifted its emphasis to high volume business.

These factors were directly addressed by the U.S. Department of Agriculture in testimony to this Subcommittee in 1971:

> "Farmer bargaining cannot change the laws of supply and demand or do away with competing domestic and international farm products or synthetics.
>
> "Farmer bargaining probably offers limited opportunities for nationally produced products, such as feed grain, wheat, soybeans and beef which are not sold under advance contract. However, it may offer a potential for improving marketing efficiency and increasing farmer returns in fruits, vegetables, and specialty crops. Milk with its special laws is already far beyond what we are discussing here.
>
> "Farmer bargaining cannot add marketing strength where prices are set in a world market,...when the export market is substantial.
>
> "Farmer bargaining cannot, for any extended period, achieve a price beyond the basic, intrinsic value of the product, otherwise consumption decline will become inevitable." 3/

2/ Ibid.

3/ Statement of Richard Lyng, Assistant Secretary for Marketing and Consumer Services, Sept. 20, 1971.

CONGRESSIONAL REVIEW OF AGRICULTURAL MARKETING NOTED THAT COTTON MARKETING PRACTICES ENHANCED PRICE COMPETITION BENEFITTING COTTON PRODUCERS

The Senate Committee on Agriculture Nutrition and Forestry considered the Agricultural Fair Practices Act in extensive public hearings and executive sessions in 1966 and 1967. The Committee debate centered on the necessity of such legislation for various commodities. The Committee concluded that the uniqueness of the marketing systems of cotton and tobacco rendered unnecessary their inclusion in the legislation, stating in the Report that:

> "The committee gave extensive consideration to the problems of cotton and tobacco before it decided to recommend their exclusion from the act. Witnesses representing cotton ginners and warehousemen testified that they are in direct competition with cooperative cotton ginners and warehousemen. Inducements such as rebates, trucking, loans, and trading stamps, are regularly offered by both cooperatives and other handlers to attract the farmer's business. If the other handler is successful, the farmer usually does not join the cooperative; and there was considerable apprehension that such inducements, since they could result in the farmer not joining the cooperative, might fall within the prohibitions of the bill. That was not the purpose of the bill. It is not intended to lessen competition between cooperatives and other handlers; and such competition is beneficial to the farmer. While the bill has been modified in a number of respects to make it clear that normal and appropriate business dealings between a producer and a handler which incidentally may or will result in the producer's decision not to join a cooperative are not prohibited, these changes were not considered sufficient in the case of cotton handlers who are in daily competition with cooperative handlers engaged in identical handling operations, but not subject to the same injunctions.
>
> "The committee gave serious consideration to limiting the protection of the bill to bargaining cooperatives, which were not engaged in the actual handling of agricultural products in competition with other handlers. However, this

> would have excluded cooperatives which might be primarily or partly bargaining associations but also handle some portion of their members' products.
>
> "Because of the difficulty in finding language which would make it clear that a cotton handler could safely compete with a cooperative handler without being continually prepared to prove the motive for his actions, and because the evidence indicated that the cotton cooperatives did not need the protection of the bill, the committee has recommended exclusion of cotton." 4/

The House Committee on Agriculture saw no "compelling reason" to include cotton in the Agricultural Fair Practices Act, stating in the Report that:

> "(1) An amendment to delete the bill's exemption for tobacco and cotton was defeated by a voice vote. Since these crops are subject to production and marketing control and price support programs, the committee did not see any compelling reason to include them in this bill. In addition, there was no request from cotton and tobacco producer or cooperative organizations for inclusion in this legislation." 5/

In 1974 the House Cotton Subcommittee conducted indepth hearings of the Cotton Marketing System. 6/ Every facet of cotton marketing was closely examined. Producer representatives from all areas of the cotton belt testifed. No criticism was lodged against the marketing system. The concept of collective bargaining was never mentioned, because the existing system was price-competitive and cotton producers saw no need for change.

4/ Union Calendar No. 459, 90th Congress, 1st Session, Senate Report No. 474, Agricultural Fair Practices, at pages 3 & 4.

5/ 90th Congress, 1st Session, House of Representatives, Report No. 824, Agricultural Fair Practices Act, at page 4.

6/ Review of Cotton Marketing System, Hearings before the Sub-Committee on Cotton, Committee on Agriculture, House of Representatives, 93rd Congress, 2nd Session, April 22-29, 1974.

What has occurred in the marketing of cotton, since Congress last reviewed the subject, which would justify the implementation of the collective bargaining concept? The cotton marketing system has been substantially improved in a number of areas.

- Forward contracting is now a well established and useful marketing practice in all producing areas. It is better understood by producers. Contracts were standardized by the industry and are fully enforceable by either party.
- The Commodity Credit Corporation price support loan is now available for utilization by producers for periods of up to 18 months in duration.
- Electronic marketing now provides individual farmers instant access to the market place.
- Establishment of the Commodity Futures Trading Commission provides for closer scrutiny of the price discovery aspects of cotton futures trading.
- Export sales are reported weekly to producers and the public by the Department of Agriculture.
- The Department of Agriculture, the media, and producer organizations frequently make available to farmers current world wide crop production and consumption estimates.

All of these developments have followed Congressional findings that the cotton marketing system is most competitive, and after the rejection of the bargaining concept by this Subcommittee in August 1972 -- all more reasons to reject the concept in 1980.

CONCLUSION

We believe that there is no real or government fabricated substitute for competition.

The U.S. cotton industry makes available to cotton producers a competitive marketplace with a number of buyers actively bidding for their production. In no other segment of the farm economy is the factor of competition more prevelant.

Competition is the most effective governor of the allocation of resources and the major factor in balancing supply and demand. This is the only mechanism which can best reward efficiency while providing our nation and the world markets with their requirements for food and fiber.

We will be happy to respond to any questions you might have regarding our position on this legislation.

Mr. RICHMOND. Thank you, Mr. Shwarts.

Mr. Richard Nock, executive vice president, Livestock Marketing Association, is our next witness.

STATEMENT OF RICHARD L. NOCK, DIRECTOR, LIVESTOCK MARKETING ASSOCIATION, SAN LUIS OBISPO, CALIF.

Mr. NOCK. Mr. Chairman and members of the subcommittee, my name is Richard L. Nock of San Luis Obispo, Calif. I am a livestock producer, cattle feeder, meat processor and owner of Templeton Livestock Market of Templeton, Calif. I am pleased to appear before this subcommittee as a director of the Livestock Marketing Association and as its immediate past president.

Livestock Marketing Association is comprised of over 1,500 subscribing livestock marketing business including livestock markets, livestock dealers, livestock brokers, feedlots and transporters in the United States and Canada.

We very much appreciate the opportunity to appear before this subcommittee today and to offer this statement. We are very concerned with the National Agricultural Bargaining Act, H.R. 3535, and we appear today in complete opposition to this act.

H.R. 3535 is nothing more or less than a massive collective bargaining bill involving every agricultural commodity sold in this country. Livestock Marketing Association suggests that before your subcommittee embarks on a grand reordering of the entire agricultural industry, it considers philosophical, economic, and social effects of H.R. 3535.

The legislation would mandate that the Secretary of Agriculture become a partner in marketing transactions throughout the entire agricultural economy. It would give the U.S. Government unchecked power to mediate and arbitrate collective bargaining procedures in relation to all agricultural products, including the merchandising of livestock.

Livestock Marketing Association believes that the act would alter and reshape the livestock marketing sector so drastically that the traditional realtionship of buyer and seller which has worked so well in maintaining our free economy, would become unrecognizable.

In order for this subcommittee to fully appreciate the extent of the task that would be involved in supporting this legislation, we believe that it may be helpful to take note of the dimensions of livestock marketing as a part of the fuller dimensions of the entire agricultural economy. In livestock marketing alone, the volume of commerce last year was $56.3 billion, involving the merchandising of 229.4 million heads. These figures are based on a survey of U.S. marketing transactions.

In this respect, we would request that the Livestock Marketing Association be permitted to submit, under separate cover to be a part of this record, the volume and value of livestock transaction figures for 1979, as prepared by Glen Allen, Allen Enterprises, Topeka, Kans.

Mr. RICHMOND. Without objection, so ordered.

[Not received at time of printing.]

Mr. NOCK. This may be a bit helpful before proceeding to socialize the marketing in the entire agricultural industry.

Fundamental in the National Agricultural Bargaining Act is the startling concept that nearly any buyer of livestock would be a "handler" for purposes of the act. Section 3 of the act would include in its definition of a handler almost any buyer in the livestock marketing sector, including a feeder and, probably, a producer. A feeder acquires agricultural products for processing or sale. And a producer may acquire agricultural products for sale and almost certainly for at least handling within the meaning of the act.

There is little doubt that a livestock marketing business, including a livestock market and a livestock dealer, would be covered by the act, and, by definition could no longer exist.

For example, a livestock dealer, in the business of contracting or negotiating contracts with producers for purposes of effective merchandising, this has been his job. In doing his job, he operates in a spirit of competition, recognizing differing values in differing situations.

However, under the proposed act, a livestock dealer who purchases 100 cows from an accredited association as defined in the act, for a specific sum, would not pay any more to any other farmer or producer for indentical livestock because if he did, he would have to, in effect, reimburse the so-called accredited association.

Therefore all farmers and producer associations would be establishing universal prices, in any event. This raises serious questions involving transportation problems, price differences across the country and an administrative nightmare, should the Government decide to step in under the many provisions giving it authority to do so under the act.

We wonder if the competitive method of selling utilized by livestock marketing businesses might be rendered void if an accredited association can, in effect, set the price on any given day, or forever, as there appears to be no time limitation for offering the same terms to an accredited association under the act.

The overwhelming power given by the Secretary of Agriculture and to the Federal Government to impose social and criminal sanctions is mind boggling in its devastating impact on the system as we now recognize it. One can only wonder how long it would take the Secretary of Agriculture to determine if a lot of livestock had been negotiated in good faith.

In the marketplace today, the concept of the simple contract makes for orderly and expedient merchandising of livestock, with no need for help from the U.S. Government. A buyer simply decides if he is willing to pay the price for livestock in a competitive situation and if he does, simply writes a check to the seller. This may be too simple to be fully appreciated. But it has served as the foundation of an industry which, today, effectively merchandises livestock in a manner unparalleled in the world.

It is argued that, perhaps, livestock could be exempted by this subcommittee from the provisions of the National Agricultural Bargaining Act. This would be an easy compromise on the part of the livestock marketing sector. But it would be an unfortunate one and one that it cannot make.

Each of us is aware that the marketing of all agricultural commodities in this country is so interrelated that, on a cash and futures basis, it would be absolutely impossible to provide mandatory collective bargaining in one segment of the industry and permit free market activities in another.

This leverages one segment of the industry against another. It would be extremely difficult to feed Government-enforced bargains involving grain to livestock which were sold in a free and open manner.

Accordingly, we are left with the conclusion that the enabling clauses of the National Agricultural Bargaining Act should be struck, along with the other provisions, to be insured a prompt demise.

Thank you.

Mr. RICHMOND. Thank you, Mr. Nock.

Our next witness is Mr. William Thomas, executive vice president of California Food Producers, Inc. Mr. Thomas, your testimony runs 14 pages.

Mr. THOMAS. I am not going to speak from the written, sir. I am going to make a few brief remarks and would like to incorporate our written testimony into your record.

Mr. RICHMOND. Your entire written testimony will become part of our official record.

Mr. THOMAS. Thank you, sir. I will try to keep my remarks within your 5-minute time.

Mr. RICHMOND. Thank you, Mr. Thomas.

STATEMENT OF WILLIAM THOMAS, EXECUTIVE VICE PRESIDENT, CALIFORNIA FOOD PRODUCERS, INC., SACRAMENTO, CALIF.

Mr. THOMAS. My name is William Thomas. I am executive vice president of the California Food Producers. We represent the grower community, some of which you've already heard today by way of California Tomato Growers and some you will hear next on this panel.

We appreciate the opportunity that Californians have to be heard at these field hearings. We regret that time restrictions were unable to allow those that had displayed interest from other sections of the State. And we, as others have so stated today, would like to encourage the committee to hold other hearings if at all possible.

We are here to support H.R. 3535 which is, in effect, trying to establish the right of growers to have the opportunity to bargain with those persons who are buying their products, bargain for price as well as terms of trade.

We who represent bargaining associations are becoming more and more frustrated with what we wish to be bargaining but has turned into be more surface bargaining than bargaining in good faith.

We heard the terms in previous testimony that we are getting presented with "take it or leave it" offers, which have been devastating to the bargaining arena. I would like to reemphasize a couple of those points by example. We are seeing more and more problems in the bargaining environment in California and, I believe, elsewhere in this country.

It is not something that is just applicable to the small or the multiple commodity bargaining associations or those starting up. It affects those, too. But it affects even the very largest.

We heard from the California Tomato Growers Association, being the largest, I would like to relate very briefly an incident that affected us in 1978, 1979, where we had a processor come forward and present an offer. Not to bargain with the association for established price on our commodity, but the pricing formula which said that you'd get paid only 85 percent of whatever may be later negotiated and arranged, a formula, nonspecific formula, for how you might get in excess of the 85 percent.

There would be allowed no grower participation in the development or the input into such formulas. And it appeared to be nothing more than an 85 percent of price offer. In hindsight, we see that that's exactly how it's worked. Growers were reluctant to sign under such a plan. And a cannery came forward and said, "Our policy is going to be that you must sign, at least 50 percent of your acreage, under this plan or you will lose that 50 percent in 1978 of your opportunity to grow."

Again, what happened in 1979, that 50-percent demand was made 100 percent. There was no effort by the cannery to negotiate in good faith with the bargaining association, and it was the resulting contract that resulted between the association and the processors.

Members therefore could not sign because there was not the agreement with the association and the result was that there was a total loss of the right to grow for that canner by members of the bargaining association.

We are very concerned by this. We went to the department of food and agriculture here in the State of California, who does have a very loose bargaining recognition statute but not a bargaining in good faith statute. Bargaining in not defined here as it is in H.R. 3535 and many other things, but it moves that way in California more than the available statutes federally.

So we came here to the State department and after, I don't know how many times in this building that we sat, we became very frustrated. There was not going to be an administrative remedy there. We were encouraged by them to go into the courts and have what would be the first test case in California. And we, in behalf of tomatoes, have done that. That suit is still in the procedural stages even though it's over 2 years old. It is a very complex, very broad thing and it's extraordinarily frustrating with the very shell or the very basics that appear in the California statute.

This last year, during the course of 1980 negotiations, the very large processors came forward and made what should have been an initial price offer to commence negotiations. The price offer was below 15 percent less than, not more than, in accordance with inflationary times. But less than last year's raw product price.

They also had that that was predicated on a formula pricing, not a bargained for raw product price. That formual pricing was nondescript, nor would they describe the inputs that would constitute the formula. Nor would growers have any right of audit participation in developing later the components of the formula.

So price might as well not even been addressed. It was just a hollow offer that, "We will pay you sometime in the future a price that we will predict on a formula that you have no knowledge of what and how it will work."

That offer also was not only, in fact, but expressly a take-it-or-leave it offer. They said, "Here it is, this is nonnegotiable." Something that we fear the threshold of in bargaining is the concept, "here is an offer," and that there won't be time to negotiate because "we're going to demand that associations come forward soon after the first offer is out there and sign," within a very strict time regard.

The way that is stated is, "You have a couple of weeks to sign this. We can't negotiate on this. At the end of 2 weeks we're going into the field and we're contracting on these and we're contracting around you at the loss of your grower membership if you do not sign under our initial offer."

The result in 1980 with tomatoes is because of the threat of that, because of the low price that we could not sign and the threat of loss of membership—not loss of membership firsthandedly but the loss of our membership's right to continue to contract. We could not sign nor continue bargaining and the association was not involved in price bargaining in 1980 with most of the processors because of that.

The effect of these two very briefly related incidents, which are more fully described in the written remarks, is that the processors won. The first processor is not dealing with whatsoever with association membership. The second processor is not bargaining for a price with the association although still contracting with members on their unilaterally dictated price.

This is two challenges where they have won in California over not a small and fledging bargaining association but the Nation's largest farmer bargaining cooperative.

Should H.R. 3535 been in place in the course of the events of these two examples, the bargaining duty would have been there. We wouldn't have had a "take-it-or-leave-it." We would not have had surface bargaining. We could not have been dictated to by the timed statement of "sign this in the course of the next 2 weeks," or whatever the resulting impact was. There would had to have been actual negotiations of price and terms as there had been in previous years and with other processors.

Also H.R. 3535 would have brought forward the administrative remedies in the section whereby there would have been a mediation process. It could have been sought.

I think if just mediation was involved, we wouldn't have seen what we believe to be unconsionable activities that had taken place in the course of events and, particularly, in the first described example. We think that because there was definitely an immediately impacting hardship, that we would have been eligible, at least, upon the discretion of the Secretary, to impose binding arbitration. We think a classic example where binding arbitration would have come about.

But, frankly, I don't think we would have gotten there because I think if the statutes had been there, we would not see these unconsionable terms even be presented if the processors knew that there was even a likelihood that there would be a third party, independent scrutiny. There would be a weighing of the credible arguments and posturing of both sides. I think the very presence of a binding arbitration procedure would cause a great deal of benefit.

On the enforcement side of H.R. 3535, the section 9, in that it says that there will be a mandatory movement of the administrative agency who is administering in cases where there may be bad faith negotiations. We could have had the issue timely resolved. We would not have had to litigate what is now 3 years old and, frankly, a very stale and a very nonsensy case to be litigating.

Just delay is in effect, no remedy at all, no matter what lies ahead.

This concept that you have to come forward and issue a complaint when there is alleged to be no bargaining is very important. It is the least onerous of the alternatives that could be written into H.R. 3535.

We do not have the make-whole remedy provisions as in the National Labor Association, where there would be a tremendous infusion of an administering agency and a "make-whole" remedy would be there. And those, of course, are very controversial and onerous in the labor arena. That is not how H.R. 3535 was drafted. Nor was it drafted along the lines as different State acts, where they set up bargaining periods, where there can be no negotiations with anybody, members or nonmembers, by the processors during these bargaining times.

I think the mandatory duty to bargain and the swift enforcement followups that are provided in H.R. 3535 would provide those remedies.

In closing, I would say that people are saying that H.R. 3535, in some way, interferes with the normal, free enterprise system, the business systems of our country. I suggest that without something like H.R. 3535, you have a system where there is unilateral dictation of price and terms by the very large conglomerate processors.

In order to establish even the commencing efforts of a negotiation, a give and take situation, a price and demand, all of the free enterprise system will only commerce once you allow there to be two parties active in the area.

It's a self-help program for farmers that I think has far less Government intervention, far less Government costs than many of the other proposals that you may see those speaking for agriculture ask of Government. This is a self-help program with merely some parameters of Government asking for fair dealings between the parties who are dealing. And that is consistent with many other postures of Government in other areas.

Thank you.

Mr. RICHMOND. Thank you, Mr. Thomas.

[The prepared statement of Mr. Thomas follows:]

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TESTIMONY IN SUPPORT OF H.R. 3535

SACRAMENTO FIELD HEARINGS
April 17, 1980

I. INTRODUCTION

My name is William Thomas, Executive Vice-President of California Food Producers, Inc. California Food Producers, Inc. is an advocacy arm for California bargaining cooperatives, such as California Tomato Growers Association (CTGA) and Vegetable Bargaining Association of California (VBAC) which will also present testimony to this committee. We are pleased to have the opportunity to testify before this committee at these field hearings. Few persons in agriculture would be able to make our needs known without these field hearings. Along these lines, many organizations very involved in farmer bargaining and interested in H.R. 3535 from other states have looked forward to these field hearings. Because of the time constraints the committee has made the policy of California only being allowed to testify. We regret this policy and encourage additional field hearings in other locations including, but not limited to, the Northwestern section of the country.

II. PURPOSE

1. H.R. 3535 is a very important farm bill. It is consistent with the legislative intent set forth in the present Agricultural Fair Practices Act (S.109, August 7, 1967). Public policy demands the creation of balanced business relations between growers and their processors by promoting and protecting farmer bargaining associations. This bill, which allows and protects growers

grouping together and bargaining for their crops,will help off-set the inequity which results from size and power differences between growers and processors.

2) Through bargaining there is free and orderly contracting and pricing for commodities resulting in stability of price and supply. The elimination of the uncontested superior leverage of processors tends to limit sharp fluctuations in prices and thus supply, which in turn benefits producers, handlers, and consumers. A stabilized price/supply is particularly beneficial in regards to annual crops where annual plantings can immediately respond to price fluctuations. Balancing the equity of power through bargaining between parties and providing industry stability promotes the general welfare and the free enterprise system. This bill encourages supply/demand price competition and terms of contract negotiations, so characteristic of business relations within our system.

III. PROBLEMS

The larger California bargaining associations have generally had reasonably good relationship with processors. In short, the bargaining process has had a measure of success in California. Unfortunately, those successes are only part of the story. New and small bargaining associations are continuing to have severe problems with certain processors. Many of what are now the larger bargaining associations have been able to survive many challenges by processors during their formative years as will be related by others who testify here today. H.R. 3535 would have reduced or eliminated many such bitter confrontations.

Additionally, there appears to be a new wave of efforts by processors to destroy or avoid dealing responsibly with bargaining associations. By way of example I would like to relate a couple of incidents which have faced the largest bargaining association, California Tomato Growers Association (CTGA).

A. Surface Bargaining - Coercive Pressure

During 1977, one processor began formulating a new method of payment for the 1978 tomato crop. Stated simply, this plan, called a "grower participation plan", provided for payment to the grower of 85% of the price which would be negotiated with the California Tomato Growers Association (that price being unestablished at the time) for its members. This 85% figure would be all that was to be guaranteed to the grower for his produce. The canner was to operate throughout the canning season until the following summer, which constitutes the end of the canner's crop marketing year. At that point, the canner would perform an accounting on the profitability of that tomato crop. If, after the accounting, it was determined that the canner had recovered its expenses, it would share that profit with the grower. Thereby, the grower would recover upwards from 85% of the price negotiated by the California Tomato Growers Association to possibly 100% of the price and theoretically, on exceptional occasions, the grower could recover over 100% of the CTGA price.

The canner did not submit the plan as part of the bargaining procedure but advanced it directly to growers in the field. Notwithstanding, the fact that the plan's payment is contingent on the price bargained for with the Association, the plan was being sold in the field before the cannery was effectively bargaining with the Association for the establishment of that price - let alone having yet established it.

Growers did not want to sign up under such a plan and in fact had reservations regarding the operation of the program. The Association submitted several suggestions for amendment of the plan which might have made it acceptable to growers, however, the canner rejected such modifications with "take it or leave it".

The most distressing factor to that point was the fact that the canner was offering the plan to member growers at a time when these growers were precluded by their legal obligations (the membership contract with the Association) from signing an individual contract before the terms had been collectively negotiated between the cannery and the Association.

Because of the limited interest from growers, the canner needed a device to promote grower participation in the program. One possible method to gain participation would have been to bargain the terms of the plan with the Association and make the amendments desired by the grower community. This would have been the result under the provisions of H.R. 3535. Instead, however, the canner retained the terms and operation of the plan as originally designed (take it or leave it) and adopted the policy of requiring their growers to sign at least 50% of their acres under the plan or lose that 50% of their acreage. It is this penalty feature of the plan, used to persuade growers to sign under the plan which gave rise to the tremendous controversy and cost growers so preciously on the 1978 crop.

The processor knew that grower members of the Association were legally prohibited from signing up under the plan by virtue of the Association membership agreement. The original interest generated in the proposal was therefore with those growers who were not members of the bargaining association, because those growers were free to sign (they have no contract prohibition and no bargained price to protect) and because 50% of the acreage of member growers would be unable to be committed to the program and would be taken from them and become available to non-member growers.

The combination of the above facts resulted in a situation where member growers were being coerced into either signing this proposal in violation of their bargaining agreement or losing all or part of their tomato acreage. Their other long range choice in order to avoid losing all or part of their acreage to such programs in successive years was to resign membership in the bargaining association.

Notwithstanding the fact that the canner made an "offer" of their plan to members and non-members alike, the canner knew that members of the Association were in no position to sign under such a plan. It was therefore a hollow offer to Association members. The result has been that, by virtue of their membership in the bargaining association, growers were unconsciously discriminated against relative to the terms of purchase and did not receive the operational benefit of belonging to a bargaining association — Bargaining.

Because of the canner's activity during the 1978 season, Association members growing for the canner lost 50% of their acreage. For many growers this was a travesty to their farming operation. For the canner, this resulted in a great percentage of their acreage being grown by non-members - a result which was desired by that particular cannery.

We explained that because the plan allows a canner to purchase commodity cheaper than that purchased by other processors, other canners which may have no inherent interest in dealing in such an unconscionable manner, would be forced to do so in order to effectively compete. We further warned that other canners would follow suit in tomatoes and perhaps in other commodities thereafter, which would result in chaos because of the numerous differing payment plans that would be forced on growers without the benefit of bargaining.

We further stated that other canners would begin devising programs which attempt to get around the association and that this particular canner would increase its program without bargaining with the association to encompass all their purchases in an attempt to purchase fruit cheaper and be able to totally avoid association members.

In 1979, that canner demanded all acreage to be signed under the plan without attempting to bargain with the Association. Therefore, no association members were able to sign a contract with the canner. All membership tonnage has been lost, with this processor - in effect, they have won. They have reduced price without having to bargain with the Association or deal with Association members.

Motivated thereby, other canners have begun in 1980 to devise various programs to reduce the purchase price and have promulgated those without good faith bargaining.

D. "Take it or leave it"

At the beginning of this year it appeared that the demand for processing tomatoes would be less than the supply because a modest surplus market condition had developed from the previous years' large crop. Processors knew themselves to be at least temporarily in the driver's seat. Because tomatoes are an important crop to growers and because long term land lease arrangements involve tomato production a "home" for product or a contract is extremely important and valuable. The cannery community was cutting back on contracting so there was great concern among growers that they might loose their tomato contracts. Certain processors came forward with price offers which were far below a growers cost of production and 15-20% less than the previous year's price. What should have been treated as a beginning offer to the Association which would commence negotiations was proffered as a non-negotiable price and payment program (the plan contained a "formula pricing program" by which the price would be determined in accordance with a canner devised formula which offered growers no opportunity to question the statistical inputs or results of the operation of the"formula pricing").

This plan was advanced to the Association on a "take it or leave it" basis and without even an attempt at surface bargaining much less good faith negotiations. The cannery,therefore, went into the field and started to sign non-members under their plan and told the Association here it is - take it or leave it - we are signing non-members now and will begin signing away member acreage unless the Association signed nearly immediately under the plan. There was no effort to bargain nor because of the timing mandate did they allow the opportunity for bargaining to occur. It is important to realize that the cannery was doing this at a time earlier in the season than there had ever been a price negotiated before. Consequently, the Association, unwilling to sign and lock members to a below cost of production price or to fail to sign and watch the canner sign away all Association memberhip acreage had to terminate negotiations and remove ourselves from price bargaining for 1980.

Interestingly, because of the wet, late winter the tomato plantings are low and disrupted. Should bargaining have taken place for a couple of months the temporary canner advantage would have resided and a fair price negotiated. What has happened is that the artifically low price is hurting growers severely and because the industry is back into a balanced supply/demand situation the canner as middleman will once again reap high market place margins. Only with reasonable bargaining will the true free enterprise system work to avoid unreasonable disadvantage to the farm community.

IV. ANALYSIS OF H.R.3535

H.R. 3535 does not impose new legislative policy; it carries out the legislative intent of S.109 (the Agricultural Fair Practices Act) and codifies new procedures to implement farmers' bargaining in a reasonable manner. This bill will act as a supplement to existing agricultural programs.

H.R. 3535 is a "self-help program" enabling growers to better look out for their own interests. The bill helps relieve the economic plight of farmers without requiring a large intervention by the Federal government. This form of "self-help" is far less expensive and more direct than other options of providing farm relief. It does not require Federal programming, subsidation, or extensive controls. The limited government involvement is by way of enforcement of legislative standards and is not burdensome on the government or the parties. In fact, the procedures are simple, clear cut and specific. Many ambiguities which exist in S.109 are hereby clarified which will relieve some burden. As is reflected in the present title of the Act, this bill merely calls for fair trade.

In recent years, we have identified many short falls in both Federal and State bargaining laws. This bill addresses many such problems. The following sections provide analysis of certain important sections of the bill:

A. The Bargaining Obligation

1. Unfair Trade Practices - Bargaining

Section 4(a)(6) and 4(b)(1) of the bill impose the duty on parties to bargain in good faith with one another. This addition to the unfair trade practices section places this obligation equally on both parties. Bargaining in good faith is the essence of the entire act and is emphasized in the previous remarks concerning examples how bargaining associations can be injured without a strong bargaining mandate. In short, there is no reason for bargaining associations and bargaining laws without the obligation that processors bargain with accredited cooperatives.

2. Definition of Bargaining in Good Faith

Section 5(a) of the bill

defines "bargaining in good faith" thereby eliminating vagueness concerning the nature of the obligation. Fair trade between processors and growers is the purpose of this act and the bargaining process is the key to that end. The definition, parallel to that found in other laws which involve bargaining, is reasonable and consistent with the bargaining practices of handlers who have been negotiating in good faith with associations.

Processors get specific protections from any possible abusive interpretations of the bargaining obligation definition because the bill provides that no agreement or concession must be made; the only requirement is the duty to bargain in good faith.

Existing law only requires that associations be recognized and does not impose good faith bargaining. Consequently, there have been problems as discussed supra with canners refusing to bargain or just surface negotiating with associations. Canners develop a price/purchase policy and do little more than present it to the association and then they go around and make the offer to non-members. They set time deadlines on their offers for "acceptance or you will loose the opportunity to grow". Growers are forced to sign deals because of time pressures. Member growers demand the association sign the offer so they will be eligible to sign with the canner to protect their "home" for their product — "home" is more precious than price or terms of contract. If, on the other hand, the canner was required to actively bargain fairly, time pressures and unreasonable offers would be reduced.

This act eliminates the problem of recognition vs. bargaining in good faith. This bill would operate to avoid bad faith transactions only. There is never a problem in the mind of a person with good faith what the meaning of good faith is. It is only important to the person who wants to operate on the border of bad faith.

Under existing law specific provisions have protected member growers from being individually discriminated against by processors. The bargaining in good faith statute protects members from collective discrimination by a processors' failure to deal responsibly with the bargaining cooperative.

3. Accreditation of Associations

Section 6(a) of the bill

provides for accreditation of growers' associations which will benefit both handlers and growers. The bargaining in good faith obligation will only attach to accredited associations. Handlers will thus know if they have an obligation to bargain with associations and growers will know the status of their associations. This clarification will eliminate many battles waged over situations where associations experience lack of recognition.

Questions of recognition are an extreme, large and prevalent problem in small or new associations. Even the largest associations (e.g. California Tomato Growers Association) have had recognition problems when first attempting to bargain. A most recent example of serious recognition problems involves the Olive Growers Council of California. Other special problems are associated with small or multiple commodity associations such as the Vegetable Bargaining Association of California which represents growers of nine specialty crops. Examples of these problems are provided in the presentations of the representatives of the Olive Growers Council of California, Vegetable Bargaining Association of California and California Tomato Growers Association also testifying before this committee.

Section 6(b) of the bill

sets down a reasonable criteria for accreditation similar to those which exist in some state bargaining laws (e.g. California). The provisions of this section assure that only those associations representing a sufficient quantity of agricultural products to adequately perform as a bargaining agent are accredited.

4. Equal Offers to Associations

Section 5(b) of the bill

demands that equal offers be made to association members as are made to non-members. Such clauses appear in some association contracts now (CTGA), which demonstrates that they pose no problems for processors. Without this, canners can offer more advantageous terms to non-members which would undermine the bargaining process.

Processors in their arguments against this bill (and every other effort where growers have attempted to create reasonable standards for fair trade including existing Federal and state law) argue that this position disallows necessary business flexibility. They often declare that this would disallow price differences based on quality, time of delivery, etc. In fact, this section does nothing of the sort. It only demands that the same price offer made to non-members be made to members. If there are different price systems based on quality or some other standard that is fine - the quality of the fruit will determine which category and thus which price is paid. That poses no problem. The problem is when the processor lets association membership determine the price paid.

5. Mediation and Arbitration

Section 8 of the bill

establishes upon request of the parties that mediation services be available, if negotiations are at impasse. This will avoid many conflicts and if a conflict arises may provide a reasonable solution without a party being severely and needlessly impacted.

Also, an important feature of the bill is the creation of a reasonable process for imposing binding arbitration if the Secretary deems there exists a bargaining impasse and an economic hardship to producers or handlers.

We would not anticipate that binding arbitration would often come into play but its subtle pressure merely by its existence would result in good faith negotiations with fewer bargaining games played or blood shed. The chance that negotiations may be subject to third party determinations when there is an impasse and economic hardship being experienced would reduce the likelihood that a party would unrelentingly take an extreme position to the unjustified detriment of the other.

In the examples listed in Part B concerning the take it or leave it offers where the price offer was unquestionably below the cost of production and predicated on a pricing formula where the grower has no right of audit or input are so unconscionable that parties would not risk scrutiny of a third party and would therefore commence with a reasonable posture. Arbitration is currently the trend in many legal settings and is tailor made for bargaining accountability.

6. Administration

Section 9(a)(1) of the bill

responds to agriculture's experience with agencies' (USDA and state Agriculture Departments) enforcement of the bargaining statutes which have been frustrating. Often charges filed with the agency have not been deemed important enough or in sufficient detail to get the agency to issue a complaint initiating a full review. Many such examples could be cited at both the State and Federal levels but one example involves the California Tomato Growers Association's serious concerns in the case reported in Part A of this paper were taken to our State Department of Agriculture (the Federal law was less desireable because there was no bargaining obligation under the Federal law as in California) and no meaningful follow-up came forth, thus the processors succeeded in effect by default.

Because the essence of the act is "bargaining" this bill makes it mandatory that the Secretary go to complaint and initiate a review when charges allege that a party has failed to bargain in good faith. The bargaining obligation has to be a meaningful obligation with swift and sure enforcement and remedy if breaches have occurred. Mandatory follow-up on such charges gives this assurance.

This act does not contain damage provisions such as the "make-whole remedy" available in certain labor arenas whereby a subsequently held violation of the bargaining duty would allow the Secretary to impose a remedy of "what would have the parties contracted upon" in order to compensate for the lack of bargaining, therefore, complaints must be issued mandatorily to assure bargaining between parties takes place.

Another alternative to having a clear duty to bargain in good faith with meaningful enforcement in cases of possible breach is to codify a process which sets up a "bargaining period" for each commodity during which time processors are disallowed from making offers or negotiating with anyone other than the accredited association. Laws such as this have merit and exist in certain states now (e.g. Michigan)[4].

H.R. 3535 was, however, written with the emphasis on enforcement of the bargaining duty against violating processors. This avoids establishing a more restrictive process which would remove operational flexibility from processors by disallowing all contracting during "bargaining periods. If processors resist this bill on the grounds of this section that might in and of itself lay the foundation for more strict provisions.

Section 9(a)(2) of the bill

provides that the process of enforcement for violations of any other sections of the act is similar to that now in place whereby the Secretary performs an investigation and upon his satisfaction of reasonable cause issues a complaint.

7. Enforcement/Remedies

Section 12 of the bill

provides civil penalties which are flexible enough to conform to the severity of the offense yet reasonably stiff enough to assure the intent of the act is not frustrated.

Section 13(c) of the bill

although not different from existing law it is important to maintain. This section provides growers the right to sue in civil proceedings for damages sustained by virtue of a processors' breach of the act. The status of growers' rights for legal civil actions is unclear under some existing state statutes, therefore, there is great reliance upon this provision of federal law. Without these provisions, processors could commit certain select violations where the processors' benefit derived by the violation could exceed the penalty in Section 12. Important also is that the Section 12 penalty does not flow to the injured grower who must have a right to litigate for his damages.

8. Scope of the Bill

Section 3(e) of the bill

defines producers covered by this statute. There is a need for all growers who grow produce under contract to have the protection of the Agricultural Fair Practices Act if they want to take advantage of its protections. The act is enabling legislation only and is only operative when qualifying associations are organized by growers wanting to negotiate terms and conditions of sale of their product. This bill, therefore, expands upon the growers who are now included by S.109. If such expansion into particular crops jeopardizes the passage of this measure, it could be narrowed by exempting specific commodities which cause major problems. The principle importance is developing a reasonable, responsible, and workable bargaining law.

V. CONCLUSION

Passage of H.R. 3535 will enable growers to participate in the process of negotiating for the sale of their crop. In the absence of protective statutes individual growers or associations have no possibility to meaningfully participate in open business/economic transactions with processors. H.R. 3535 advances participation in our free enterprise system and prevents a processor stifled industry yet does so in a reasonable manner which does not unreasonably interfere with processors' operations. In fact, many sections include substantial processor protections. For example, Section 4(b) of the bill establishes what constitutes association unfair trade practices against processors. Processors have been wanting such provisions for some time. (In recent discussions regarding the California bargaining law, canner representatives said they wanted provisions such as these codified in law). The inclusion in this bill demonstrates that the bill is drafted in good faith and provides equality for all parties.

Processors, however, will argue against this and every effort of growers to obtain a meaningful Fair Practices Act. Paradoxically, it will be they who suggest there will be an impact on food prices notwithstanding the undisputed facts that raw product price is a very small portion of the retail sales price of goods and that growers' bargaining efforts often concentrate on issues other than price which have great value to growers -- (i.e. grades, transport, deduction, premiums, discrimination, delivery schedules and numerous other issues).

Processors will also argue that government has no proper role to play setting and enforcing standards on business practices. This argument is inconsistent with general tenents of law where operation parameters are often codified. The alternative to the H.R. 3535 approach is either more restrictive bargaining laws which place government more directly in the management decisions of processors (e.g. Michigan bargaining laws) or other means of farm relief involving government programs. We have chosen to write and support H.R. 3535 as a balanced approach which would allow farmers to solve farm problems with a minimum reliance on government or intrusion into private business operations.

We hope you agree with these concepts and will support H.R. 3535.

Respectfully submitted,

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Mr. RICHMOND. Mr. Willoughby Houk, Firebaugh, Calif.

STATEMENT OF WILLOUGHBY HOUK, FAMILY FARMER, FIREBAUGH, CALIF.

Mr. HOUK. Mr. Chairman, members of the committee, I would like to welcome you to California.

My name is Willoughby Houk. I am a family farmer from Firebaugh, Calif. My father, my two sons and their families, my two daughters and their families, farm in western Madera, Fresno, and Merced Counties. Our family has four generations living and working on our farm today. My family has been in the farming business for over 200 years. More than 60 of that here in California. We belong to the Madera Co-Op Cotton Gin, Ranchers Cotton Oil Co-Op, Diamond Walnut Co-Op, California Corn Growers Co-Op and the National Farmers Organization, a collective-bargaining association for farmers and ranchers.

I would like to express my appreciation to the committee for the opportunity to be here today to provide you all with information I feel is needed by this committee to make judgments on H.R. 3535, a bill to assure fair practices in agricultural bargaining.

The work of members of this committee, particularly Congressman Tony Coelho of my home district, and Congressman Leon Panetta of a neighboring district, is well known to me and other family farmers. It gives me a real sense of pride and well-being to have men like these representing agriculture's interests in Washington. I particularly would like to commend Congressman Panetta for having the courage to become involved in marketing legislation. We need more legislators with this type of understanding of agricultural products.

In the past, our farm has raised some of the perishable commodities, cantaloupes, peas, apricots and I realize there are real problems, particularly in the contracting and marketing of perishable commodities. The marketing problems have forced us to stop producing these perishables. I very much appreciate the concern for farmers and ranchers and the efforts put forth by Congressman Panetta and Congressman Hansen in this bill to correct these inequities.

I have some very real concerns about some of the provisions of H.R. 3535. I feel, in trying to correct illness in the agricultural industry, the bill could very well kill the industry. The foremost concern I have is that even without everyone seeking to become accredited associations under the proposed bill, they may become the victims of erroneous complaints and ensuing investigations and charges. There are provisions in the bill which invite this. I see no limitations in the bill to prevent it.

Another area of concern is found in section 14 of the bill where the Secretary of Agriculture, under whatever future administration appoints him, is given almost unlimited authority to conduct various investigations and hearings to carry out broad objectives of the proposed law. If past history of some government agencies is an example of what could happen, there will be real problems. The USDA could conduct an investigation, leak the material to an outsider and hand a case to someone at practically no expense, who has an ax to grind against a producer, organization, association or cooperative.

I am a member of a collective bargaining group of producers that have experienced a lawsuit in which other cooperatives are involved. To date, it has cost us several million dollars in legal fees and drained many hours of the organization's time, over the course of several years, and it's not entirely resolved yet. And I might add there that I learned this morning that that several million dollars is over $7 million now. With the broad powers set down in this proposed law, no one would be immune, individuals, organizations, cooperatives, handlers, buyers, canners.

A much better approach would be to amend the Agricultural Fair Practices Act of 1967, H.R. 13541 and S. 109, and the Agricultural Fair Practices Act of 1968, S. 474.

I think you would be making a fatal error in giving the Secretary of Agriculture the broad powers indicated in H.R. 3535. These are times of less governmental interference and regulations in agriculture's thinking, not more.

When making a thorough study of the bill, I have to say that it has the potential to do more damage to collective bargaining efforts of the family farmers and individual producers than good that could be derived from passage of the bill.

I believe that farmers and cooperatives have all the protection that they need under the Capper-Volstead Act, which provides full authorization for all farmers and ranchers bargaining activities. Anyone who wants to bargain for farm products may do so now.

It's about time for producers of agricultural products to realize that they own all of the food in this Nation first. And someone has to buy it from them. If farmers and ranchers do not have the courage to organize to achieve a cost of production plus a reasonable profit then, in my opinion, we have no one to blame except ourselves.

If farmers and ranchers think that the Government or someone else can take care of and cure their economic and marketing problems, just look at the record.

Back in 1962, when a statement of national policy by the Research and Policy Committee of the Committee for Economic Development entitled "An Adaptive Program for Agriculture" was issued, this Nation had 16 million people on 6 million farms. Today we have about 5 million people on 2.7 million farms.

And even a more alarming statistic than this is the fact that approximately 155,000 farms in this entire Nation are left that pay their bills and derive their living from products of the farm without outside nonfarm income.

The corporate presidents and academics who make up the CED recommended the elimination of one-third of the farm population within 5 years by enforcing below-parity pricing.

As stated, the primary benefits of these recommendations would be:

One. The increase of returns on corporate investment in agriculture.

Two. Over 2 million farmers and families entering the urban labor pool, which would tend to depress wages.

Three. Lower prices of agricultural products which would both increase foreign trade and provide cheaper raw materials for domestic food and fiber processing.

Some of the corporations who belong to CED who would benefit directly include the following partial list:

Bank of America, George A. Hormel Co., Anderson Clayton & Co., United Fruit Co., Pillsbury Co., H. J. Heinz Co., John Deere Co., Swift & Co., California Packing, now Del Monte, Oscar Mayer Co., General Foods, Campbell Soup, American Sugar, National Dairy Products, Jewel Tea, Simond-Shield-This Grain Co., and about 200 other major corporations.

I point this out to remind members of this committee that the forces against bargaining for fair prices for farmers are tremendous.

I feel that a better solution than H.R. 3535 would be to protect the Capper-Volstead Act against erosion, amend the 1968 Fair Practices Act in the area of bargaining for perishables and hope that the farmers and ranchers of this Nation have the good sense and courage to organize to cure their own problems.

Mr. RICHMOND. Thank you, Mr. Houk.

Mr. Bill Taylor, president of Vegetable Bargaining Association of California. Mr. Taylor is accompanied by Mr. Lawrence Porter.

STATEMENT OF WILLIAM C. TAYLOR, PRESIDENT, VEGETABLE BARGAINING ASSOCIATION OF CALIFORNIA; ACCOMPANIED BY LAWRENCE PORTER, TREASURER

Mr. TAYLOR. Congressman Richmond and members of the House Agriculture Committee, I am Bill Taylor, a grower from King City and president of the Vegetable Bargaining Association of California. My operation consists of a family farm corporation comprised of some 1,000 acres of leased ground on a sharecrop basis. Among the crops that are grown are beans, peppers, sugar beets, garlic, and occasionally, we have grown broccoli and cauliflower.

In my testimony, I would like to outline the scope and activities of the Vegetable Bargaining Association and indicate its strong support for H.R. 3535, both on the behalf of my farming operations and some 200 members of the Vegetable Bargaining Association of California.

It is our belief that passage of H.R. 3535 would enhance our ability to grower members to receive an adequate return on their investments. At the present time, that is not possible.

Before explaining our organization, I would like to quote from "The Kiplinger Washington Letter" of April 11, to indicate the economic lot of farming communities:

> Small farm area towns are hurting, business flat or declining. Farmers are in a hole, income is falling, costs rising, deeply in debt. For such towns, the recession has been on for some time. Won't be over for the rest of the year, even if farm prices rise. Debt load is too heavy.

We believe this is a true and accurate statement underlining the need for H.R. 3535.

The Vegetable Bargaining Association of California is a multicrop bargaining association and is incorporated under current California agriculture laws. We bargain with 14 processors on 6 and sometimes 8 annual crops that are frozen, canned, fried, or dehydrated. In one of our commodity groups, cornnuts, the entire U.S. production is less than 3,000 acres.

The Vegetable Bargaining Association, as mentioned, is comprised of some 200 members and its activities are directed by a board of directors who are elected by the entire membership. The board of directors are responsible for administrative activities only.

Growers within the Vegetable Bargaining Association may elect to join one or more of the commodity bargaining groups. They execute a marketing agreement which appoints the association the exclusive bargaining agent for their commodity or commodities. This agreement is for a 3-year period of time. The association is supported financially by assignment on grower crops and are determined by each grower group. These assignments have been in effect for over 10 years and have not presented a financial burden on the producer.

These assignments range, depending on the value of the crop, from $2 to $6 per acre. But in all cases represent less than one-half of 1 percent of the value of these crops.

The Vegetable Bargaining Association is a very democratic organization. Each grower member is expected to participate in the bargaining process. The bargaining process, itself, is a sequence of events in which, at the beginning of the bargaining year for each commodity, growers within that commodity meet and elect grower members to a negotiating team and establish price and contractual terms objectives based on a number of economic issues. These economic issues are extremely important as part of establishing price objectives and include inventories, market acceptance of the commodity, cost of production, alternative crops, and competition for acreage in other producing areas.

The elected negotiating team then requests meetings with the processors involved. Each new proposal or counterproposal is then taken back to the entire grower group for discussion and the formulation of new proposals. At no time does the board of directors, the staff nor the negotiating team make a final settlement with any processors without reference to the grower community within that commodity group.

USDA, in 1979, indicated growers received 32 percent of the consumer food dollar for their efforts. Bargaining efforts in 1980 on crops of five commodities have resulted in gains over the previous price of some 2 to 9 percent, significantly less than increases in cost of production with inflationary rates of 18 percent.

We strongly believe in H.R. 3535 because it would enable the Vegetable Bargaining Association of California to become an accredited bargaining association. It would then require good-faith bargaining on the part of the processors and would eliminate unfair trade practices and, most importantly, would authorize the Secretary of Agriculture to enforce the language of this legislation.

I thank you for your attention and I will attempt to answer any questions you might have.

Mr. RICHMOND. Thank you, Mr. Taylor.

Mr. Porter, do you have anything to add to Mr. Taylor's testimony?

Mr. PORTER. Yes; I do. My statement is three pages long.

STATEMENT OF LAWRENCE PORTER, GENERAL MANAGER, SALINAS LAND CO., KING CITY, CALIF.

Mr. PORTER. Congressman Richmond, members of the House Agriculture Committee, I am Lawrence Porter, general manager of the Salinas Land Co. of King City and I represent the property owners of some 7,500 acres of land leased to 16 growers on both a cash-rent and a share-rental basis. Many of our growers have leased our land for over 20 years.

Most of our growers are members of the Vegetable Bargaining Association of California, and I serve on its board of directors as secretary-treasurer.

Membership retention becomes a problem with many bargaining associations through discontinuance of farming operations and retirement. The ability of bargaining associations to attract new members is inhibited in many ways by processors. Processors, in a number of subtle ways, often times encourage growers not to become members of bargaining associations through initial contracts or increases in acreage to nonmember growers. Reluctance by processors and handlers to deal with bargaining associations is quite apparent to those of us in bargaining associations.

In the negotiating process many processors, not all, resort to games. An example of games that processors play is the use of misinformation about what one producing area is doing versus another. Exaggeration and claims of acreage, price, and other terms of contract are the standard rather than the unusual.

Because of the number of growers who I work with, I have been involved and have been appointed to a number of grower negotiating committees. And while many processors will make a price offer statement that "this is not a take it or leave it situation," their subsequent actions belie the veracity of that statement.

One case in point: Upon a request on behalf of our association to commence negotiations, a processor within the garlic dehydrating industry merely stated that they no longer were going to procure garlic for dehydration in our area of production. No attempt was made by the processor to determine if their price and terms of contract could satisfactorily be negotiated with the grower negotiating team. The processor simply did not recognize our association by refusing to discuss the terms of the contract with the growers.

During our attempts to attract membership in other growing communities, growers have been told by processors' representatives and agents that if they join a bargaining association, they will lose their acreage and, at the same time, intimidating growers by loss of acreage if they testify to those facts.

These are but isolated examples of the need of new legislation to define unfair practices within an enforcement provision by the Secretary of Agriculture as provided by H.R. 3535. In California, we have sections in the agriculture code outlining some of the provisions of H.R. 3535. However, to date, administrative relief by the California Department of Agriculture from these activities has been less than satisfactory.

A number of individuals and associations have been concerned about their inclusion under H.R. 3535. It is readily apparent that this is enabling legislation grower commodity groups and bargaining associations are not bound by the terms of this legislation unless they so elect to become accredited.

I have here an example of one of the commodities that we represent, Fordhook lima beans, which has been purchased in the last several days from a large chain market and please note the consumer price of 63 cents attached. This is the equivalent of $1.01 per pound. Last year, growers received an average of 20.5 cents per pound for this commodity. We have been negotiating with our processor for some time now to establish a price for 1980. The processor's initial offer was 1 cent below last year's price which is a 5-percent reduction in price to the grower. This is at a time when growers' costs are increasing at a 15-percent to 20-percent inflationary rate. If growers are to receive a price increase offsetting their increased cost of production, it would mean a raw product price increase of 3 cents per pound or 3 percent more to the consumer.

Our grower association may settle the negotiations with processors in a number of different ways:

One. Through negotiations, a satisfactory price and terms of contract may be obtained. Grower members are then notified and may sign contracts. This is certainly the most desirable situation.

Two. In the event that price offers and contract terms are not satisfactory to the majority of the growers, our association has, on occasion, released growers to sign contracts that do not carry association approval. This allows those growers who, because of their circumstances, wish to continue production of a crop and to keep the commodity in production in our area.

Three. Last, when price offers and contract terms are totally unsatisfactory to the growers, our Vegetable Bargaining Association may invoke the terms of the bargaining agreement as a last resort. This requires a majority vote of the entire commodity group and does not allow growers to sign contracts.

The Vegetable Bargaining Association of California is dedicated in its objectives to assure that the average grower gets an adequate return for his farming efforts and investment. We do not feel we attempt to price our commodities unrealistically high nor do we attempt to support marginal growers.

We strongly support the objectives and passage of H.R. 3535 in that it would provide the growers of our association a redress of unfair practices that is not now available under current California law.

Mr. Richmond. Thank you, Mr. Porter.

Mr. Panetta.

Mr. Panetta. Thank you, Mr. Chairman.

I am pleased that we had this particular panel because I think it presented the various viewpoints that are coming forward on H.R. 3535. Obviously, there are a lot of criticisms, there are a lot of dangers, but there are also a lot of problems in this area.

I am familiar with Mr. Nock, who does a great job in the livestock marketing area, as well as with Mr. Taylor and Mr. Porter.

You see the problems on both sides, and while I recognze the criticisms and the dangers, there also happens to be a law on the books, the Agricultural Fair Practices Act, that simply is not really being enforced and that's the problem.

It's probably better just to get rid of the law if we're going to play those games rather than have a law on the books to provide certain protection but isn't being enforced and that's, basically, the concern I have, how to tighten that up so that, in fact, it delivers.

Mr. Shwarts, you're testifying for the cotton growers, and I have a tough time resisting this criticism, very frankly.

You're arguing that there is no substitute for competition. But in an area where you have price support, I don't think you have a lot of room to talk about free competitive system when, in fact, if you didn't have those price supports, the less productive farmer would probably be out of business. Isn't that the truth?

Mr. Shwarts. Congressman Panetta, in California, for example, and as you know, cotton prices vary from State to State, according to the quality of the cotton. But I would say San Joaquin Valley cotton this year, at this time, is at least 20 cents a pound above the price support level. So the market price for the past number of years has been so far above the price support levels, it has really been a negligible factor. Those price supports are there for the protection of the grower in the event it's needed. It's strictly insurance but it hasn't been utilized.

Mr. Panetta. I will tell you, I'm sure that tomato growers would like to have a price support system. You know, the fact is, it seems to me, that if you're talking about a free enterprise system, much more important to protect the bargaining between farmers and those who buy products as opposed to a price support system which is, literally, the Government coming in and saying, "This price isn't going to go below a certain level, regardless."

That's one of the problems in this area, obviously there are laws on the books, there are price support systems for some crop areas, but in an area where, in effect, you're raising what is effectively a perishable crop, you've got no place else to go with that perishable crop.

Cotton's a little different. Grain and commodity crops are a little different. They can obviously go into storage.

But in an area where you've got a perishable crop, you don't have any place to turn. That is your problem we're dealing with here where you've got perishable crops. You've got somebody that's refusing to deal with a bargaining association, and in the end a farmer pays a very severe price in that process.

I share your concerns, Mr. Nock's concerns, about whether in the end, having the Secretary or the Federal Government come in and play a role in terms of arbitration, raise some real concerns. It absolutely does. No question about it. Absolutely does.

Anybody who's familiar with the Department of Agriculture and has to relate to any of the things the Government does knows that there is a lot of redtape in our bureaucracy, and probably some very inadequate people who implement those laws throughout the agriculture area.

On the other hand, how do you tighten up a law that says there ought to be fair practices and, yet, you've got these examples that have been presented in which, indeed, there has been a rejection of these bargaining groups in many instances.

That's the problem we're dealing with and I'm not sure that H.R. 3535 is the ultimate answer at all. But on the other hand, I do know that what's on the books now is not working or we wouldn't have to be here testifying about the problems that are impacting on the industry. So the real test is how do we try to improve that?

I thank all of you for presenting your views today.

Mr. RICHMOND. Thank you, Mr. Panetta. Mr. Glickman.

Mr. GLICKMAN. First of all, I want to compliment you, Mr. Houk, on what I felt was an excellent statement of the problems that are faced in rural America, all over this country, where all segments of society seem to be indexed and protected except for the family farmer. I see that in my own area where the price of wheat today is roughly what it was 15 years ago. As I can tell you, the components costs of the cost for the fertilizer, seed, and so forth, are up five and six times.

If it weren't for the productivity of the family farmer, the economy would be in worse shape. However, if the current situation continues, at least in my part of the country, we face massive liquidations of family farmers.

I am not sure it's as bad in fresh fruits and vegetables. But in terms of grain farmers, I believe one of you had grain before, I know that it's very bad.

I would like to ask a question and I ask this to my friend in the cotton industry. You indicated that one of the reasons why you didn't like the program for cotton was because the current system of price supports work well and people rely on that situation. But in large areas of this country, the price support system does not work well, and does not provide any kind of protection for farmers, whatsoever. I'm particularly talking about the grain industry.

Are your comments pretty much directed toward the cotton industry? Or were your comments directed across the board?

Mr. SHWARTS. Yes, sir; Congressman Glickman, my comments were solely concerned with cotton as a unique commodity. This was the conclusion reached by the Senate Committee on Agriculture in 1967. It was also agreed by the House Subcommittee on Cotton in 1974, that cotton is, indeed, unique among all other commodities. Therefore, I would like to point out that I have been very impressed and gravely concerned at the plight of the fruit, vegetable, and nut growers. They have terrible problems. My feeling is that cotton is unique and should be excluded from this H.R. 3535.

Mr. GLICKMAN. I then go to another question I think you raised, as well as the gentleman from the Livestock Marketing Association.

It appears to me that what we need to do is try to target in on those industries where current price-setting mechanisms are not fair.

What you're telling me, Mr. Nock, that in the livestock business, the current futures markets, tax markets, satisfy an appropriate market system so that we don't need and, in fact, it would be harmful to the industy to have a system of collective bargaining. Is that basically what you're saying?

Mr. NOCK. That is exactly correct, Congressman. The livestock industry doesn't need anymore Government interference. We want about half of what we've got eliminated, if that's possible.

Mr. GLICKMAN. You know, I agree with you. But Harry Truman or Will Rogers once said that everybody in business said they don't want Government interference except when they need it, witness the Chrysler Corp. [Laughter.]

I think Mr. Panetta put his finger on it when he said some regulatory requirement is necessary to preserve the integrity of the market.

The reason I asked you is because I had some chicken farmers in Arkansas who came to me. They felt captive to some processors in their area, and they had no way, really, because of the transportation and unique nature of the State, to market their chickens except to one or two key processors. They said, "We're at a loss for leverage. There is no way for us, really, to market them."

I wonder if you might have any comments on that.

Mr. NOCK. It would appear to me, and I'm not in the chicken business nor the vegetable business, we don't have that problem in the livestock marketing field yet.

Now I'm not saying that 5 years down the road in the State of California, maybe we'll be in the thing too. But, perhaps, if there is a processor that is unfairly treating the growers, either the growers ought to buy the plant and merchandise their own products or, in that particular isolated case, maybe the Government could force negotiations. But on an across-the-country basis, we can't handle it.

Mr. GLICKMAN. I do sense there is some hesitancy across the board to see some enormous Federal regulatory power given the Secretary of Agriculture, roughly the same powers the Secretary of Labor has under the national collective bargaining laws. I have sympathy for that. I also have sympathy for the fact that this may not be appropriate for certain types of products or commodities.

But I get the feeling that in some areas, in perishable fruits and vegetables, there may be, and we will hear from the other side of the picture pretty soon, there may be no other way to establish the kind of parity in bargaining, where you can't find your price being set by other market forces. I don't know the correct answer to it.

I do happen to agree with you. I don't think that livestock, at least under the current methods of pricing livestock, it wouldn't seem to be appropriate to have this kind of situation.

Yes, Mr. Houk.

Mr. HOUK. Congressman, I would like to add something to that because cotton is my principal crop and has been our family's principal crop, as I stated at the beginning, for over 200 years. So I have some expertise.

Now if anyone thinks that these cotton programs that we now have in the Government where "big brother" takes care of it, let me acquaint you with some facts.

No. 1, we have a $50,000 limitation on that program. And even at the cotton prices we have today, at a $50,000 limitation, in net profits that would return my family about $1,500 on our cotton farm.

No. 2, the Government program has a base price or the target price on cotton runs someplace, it varies between 52 cents and 56 cents a pound.

Right now, and this is pretty well true across the Nation because I've checked with other cotton farmers organizations, our cost of production is 68 cents a pound to produce a pound of cotton. And the market right now is in the area of 77 cents.

That the Government will guarantee me 52 cents only if I plant a prescribed amount of acres. And not only if I only plant a prescribed amount of acres of cotton, but all other commodities within the Governmental program, which are based on the same low type of crop. So as far as Government programs helping grain or cotton right now, either one, put that out of your mind. It won't happen.

Mr. GLICKMAN. Yes; I know my farmers back in Kansas would agree with you, too, very much. I thank you.

Mr. RICHMOND. Thank you, Mr. Glickman.

Mr. Nolan.

Mr. NOLAN. No; no comment.

Mr. RICHMOND. Thank you very much, panel. We certainly appreciate your very interesting testimony.

The next group is from the State of Washington, Mr. Bob Krug, president, Washington Potato Growers; Mr. Herry Heilig, vice president, Washington Potato Growers; Mr. Don Ahrenholtz, I assume he's with the Washington Potato Growers; Mr. Dwyte Wilson, executive vice president of the Oregon-Washington Farmers Union.

Mr. Bob Krug, do you have your testimony?

Mr. KRUG. Yes, sir, there should be a copy there.

STATEMENT OF BOB KRUG, PRESIDENT, WASHINGTON POTATO GROWERS ASSOCIATION

Mr. KRUG. Mr. Chairman, I am Bob Krug, president of Washington Potato Growers, a farmer in the Columbia basin of Washington. We are involved in growing potatoes, sweet corn, dry beans, and wheat. I appreciate the opportunity for us to be here today from Washington State to get an opportunity to talk on H.R. 3535.

Let me give you a very short history of Washington Potato Growers. Washington Potato Growers is an agricultural cooperative incorporated under the laws of the State of Washington. We are the only potato bargaining cooperative in the State of Washington for potatoes. We have been bargaining on behalf of member growers with Washington potato processors since 1967. Prior to 1976, we were a multicommodities association operating under the name of Washington Agricultural Marketing Association.

Over the years, Washington Potato Growers have been successful in obtaining the best possible price for its member growers under some very difficult marketing conditions.

Our association is divided into six districts. Each district elects their director for a 3-year term. The elections are staggered so there is continuity in board members. Presently there are 12 directors of the association. These directors elect a president, vice president, secretary. They also employ a manager, assistant manager and secretary. They presently have a membership of 227 growers.

Contract negotiations usually begin late in January each year and are normally concluded by April. As well as negotiating for the price of potatoes, the association also negotiates all other terms and conditions of the contract, including grades, inspection, payment schedules, delivery allowances, storage increments, and quality incentives. The result of the negotiations is an approved contract for use between the grower and the processor.

The potato industry in the State of Washington has developed rapidly over the last 20 years. The farm dollar value of the potato industry has increased from under $10 million in 1958, to over $144 million in 1978. The total dollar value generated in Washington State's economy exceeds $1 billion.

In 1979, the potato acreage was 103,000 acres. Total production was over 49 million hundredweight. Washington State ranks No. 2 in the Nation in terms of total production and No. 1 in terms of yield per acre. At the present time, 85 percent of our total potato production is processed. So you can see why we are concerned about this legislation.

There are nine potato processing plants in the State of Washington. Our organization negotiates contracts with seven of these nine plants. We do not bargain with two plants. However, we did negotiate with both of them in previous years, but one of these processors circumvented the association by encouraging members to resign from the association. The other processor encouraged new growers to start growing potatoes or purchased potatoes from nonmember growers.

One of the production areas that directly affects the efforts of Washington Potato Growers is the two counties in northern Oregon, just across the river. This area is one of the six districts who are now part of Washington Potato Growers. There are three processors in this area that Washington Potato Growers bargains with.

Even though we bargain with these three major processors in this area, the situation is complicated by the fact that two processors have formed a large corporate farming operation that grows approximately 9,000 acres of potatoes for their own processing plant. The expected acreage in northern Oregon for 1980, is approximately 20,000 acres. This 9,000 acres represents close to one-half of the russet burbanks grown in the area. So you can readily understand the fears and concerns of those growers involved in that area. The average return to the grower is approximately $10 a ton less for nonassociation contracts compared to the association-negotiated contracts.

Now these inequities are considerably greater when you realize that the grower costs of production have increased 20 percent this past year. Based on contracts that we have negotiated to date, the average return to the grower reflects a 6- or 7-percent increase over this last year.

One point that this committee must recognize is that if agriculture is to survive in our national economy, we must have a fair return for products sold. Agriculture cannot continue to bear the brunt of spiraling inflation.

The major weakness of the existing Agricultural Fair Practices Act as it pertains to agriculture is that it does not require a processor to bargain with a grower association. It is becoming increasingly difficult to deal with these processors. They are becoming larger and fewer in number. The nine plants that I refer to in Washington are owned by seven different companies, where previously they were owned by nine different companies.

The tremendous imbalance in size, numbers, and market power of participants on each side of the market is enormous. In effect, there are seven buyers purchasing from 300 growers.

The size and market power disparities often can, and do, force noncompetitive prices and inequitable terms on our producers, as well as the responsible processors in our area. These processors are competing in the same marketplace with different raw product costs.

The Agricultural Fair Practices Act has been largely ineffective in allowing producers to bargain for their sole means of revenue. This act allows producers to organize voluntarily and is supposed to prohibit the discrimination by buyers because of membership in an association.

However, the act has failed because the right of producers to negotiate with a buyer through their association is not assured. The buyer has no obligation to recognize a bargaining association even though the producers joined the association for the express purpose of having it negotiate contracts on their behalf with the buyer.

This type of legislation doesn't cost, it pays. Maintaining a healthy agriculture must be a concern of all legislators. The economics, statistics, and cooperative service of the USDA estimates that if all producers of processed fruits and vegetables were able to receive 10 percent more for their products and the processors passed all of these increased costs on to the consumers, the consumer food bill would only go up one-half of 1 percent.

Going one step further, in the potato industry, the producer receives 2½ cents per pound for raw product. The processor receives 25 cents to 28 cents per pound. You pay approximately $2 per pound at your local fast food outlet for your french fries.

One argument put forward by the opposition to this bill is that producers would demand excessively high prices for their product. Anyone with a background in economics knows this is absurd. Any price increase in perishable products is limited by competition from a vast array of domestic and international agricultural products and synthetics. In addition, high prices encourage new growers and resultant lower prices.

Also price advances are limited by the highly competitive nature of the food industry and particularly the fast food business. Each potato-growing area in North America is competing for the same market, and this, in itself, prevents excessive pricing.

Many times in the past, agricultural organizations have requested support of programs or subsidy payments. This legislation is not asking for any kind of a support program. It simply requests straight forward self-help legislation. Let me emphasize this is simply a legislation that will enable growers to help themselves if they so desire.

In conclusion, Mr. Chairman, we are not asking you to support legislation that will give agricultural producers an unfair advantage. But, rather, we are asking you to support legislation that will give agricultural producers an even break in the bargaining process.

Thank you.

Mr. RICHMOND. Thank you, Mr. Krug.

Mr. Don Ahrenholtz.

STATEMENT BY DON AHRENHOLTZ, EXECUTIVE VICE PRESIDENT, WASHINGTON STATE BUREAU

Mr. AHRENHOLTZ. Thank you, Mr. Chairman, members of the committee. We appreciate the opportunity to present this statement. I am Don Ahrenholtz, executive vice president of the Washington State Farm Bureau. I am presenting this statement on behalf of the 5,000 member families of our organization. We are the State affiliate of the American Farm Bureau Federation, the largest general organization of active farmers and ranchers in the world with a membership of 3.2 million families.

Washington State Farm Bureau, like other State farm bureaus, has a long history of serving its members' needs through service to member programs. Our organization has assisted growers in developing marketing organizations in our State and encouraged growers to do a better job of marketing their products.

Farmers are more numerous and conduct smaller scale operations than processors. An individual farmer has little or no bargaining power on the price of his products or other terms of trade. While some processors may have the ability to purchase from farmers over a wide area, farmers have few, or often no alternative markets.

Agriculture producers have been reluctant to join together in marketing their products for fear processors will bypass them at contract time or offer contracts for smaller acreage. Processors have also jealously guarded their independence. Farmers have become experts in their field but left the marketing of their product to someone else. In today's business world with huge capital requirements, tight money and high interest rates, financial institutions are reluctant or completely unwilling to loan money to plant high cost crops without a guaranteed market.

We believe farmers, through their organizations, must develop the capacity to understand the market system and manage their production to gain the highest return from the market. To aid in managing their production farmers may want and should be guaranteed the right to form associations to negotiate contracts with processors far in advance of production.

Increases in food processing prices are too often made at the expense of the producer. We know the middleman's costs have gone up. Labor costs, transportation costs, and energy costs are higher for everyone including farmers.

Energy has always been a small part of the consumer's bill. This is no longer the case. With energy and fertilizer costs skyrocketing, producers are in a serious price squeeze in today's market system. Add to that problem the inflated cost of doing business with interest rates over 20 percent and you wonder how agriculture can survive. The farmer has covered his increased costs through efficiency but efficiecy can only bear the cross so long. The producer must be able to pass along to the consumer increased costs that severely reduce or totally eliminate profit on a product.

His only means of doing this is with the increased bargaining power through marketing and bargaining organizations. Manufacturers and middlemen rarely absorb total increased costs of products. Invariably they are reflected in wholesale and retail prices. This is the accepted way of doing business in every industry but agriculture.

Perhaps what really should be questioned is the presumption which has almost become tradition, that Americans should not have to spend more than 16 to 17.5 percent of their income for the purchase of food.

A number of producers who are undercapitalized and producing for today's market will not be in business next year. We must make the public understand their economic well-being is not just an agricultural issue. Those people concerned about preserving agricultural land had better be concerned about preserving agricultural producers. Land will stay in agriculture only as long as the farmers and processors can realize a fair return on their business investments.

The physical size of the farms has increased in the Northwest, as it has across the country. Grave concerns are expressed as to whether the family farm is going out of existence or is still a live, viable unit. Farms have gotten larger because we've substituted captial for labor and used improved technology to improve productivity.

The existence of family farms operated by members of the same family depends on the ability of those operators to achieve a fair return on their investments and their labor. Their ability to secure a fair return is dependent on their ability to join together with other producers for bargaining purposes. Consequently, the success or failure of the legislative effort to establish agricultural marketing and bargaining associations will play a major role in determining the size of agricultural units of the future since only larger units can effectively bargain with processors for favorable terms of sale.

We believe H.R. 3535 is a mechanism which will allow producers to band together to bargain with processors for fair return for their products. Agricultural producers understand that processors are a necessary part of their business and recognize that they too, must make a profit to stay in business.

This marketing legislation requires good faith bargaining by both parties. Producers should have the right to expect good faith bargaining between associations and processors for terms of sale. Some people are concerned that good faith bargaining will result in higher consumer prices. This is not necessarily true. Bargaining associations permitted under law will be limited by natural means, competition. Lowering the price of raw products is unlikely to cause much difference at the supermarket checkout counter.

To cite a classic example: When wheat goes up 2 cents a bushel, bread goes up 10 cents a loaf. When the price of wheat goes back down, the price of bread is not reduced.

H.R. 3535 would allow producers to work together within the law, without turning to Government to solve our problems. There are few areas in which Government can operate as effectively and efficiently as the private sector. We do not believe that this is one of them. Government intervention into marketing and bargaining would only lead to more regulations and increased costs, the usual product of Government-controlled programs.

There are no simple solutions to complex problems. But one relatively simple way farmers can help themselves is by joining together in associations to market their products.

Thank you, Mr. Chairman.

Mr. RICHMOND. Thank you, Mr. Ahrenholtz.

Our last witness from Washington is Mr. Dwyte Wilson, executive vice president of the Oregon-Washington Farmers Union.

STATEMENT OF DWYTE WILSON, EXECUTIVE VICE PRESIDENT, OREGON-WASHINGTON FARMERS UNION

Mr. WILSON. Mr. Chairman, you have a copy of my testimony.

Mr. RICHMOND. Yes, I do, and I bring you best wishes from Chairman Foley.

Mr. WILSON. Thank you. We had a very nice meeting with Chairman Foley in Spokane last Saturday. Our national president was there and it was very productive.

Mr. RICHMOND. Actually, Mr. Foley reminded us to send his best wishes to each and every one of the members of the Washington panel.

Mr. WILSON. Thank you. I just mention that my name is Dwyte Wilson, executive vice president of the Oregon-Washington Farmers Union, Vancouver, Wash.

If I may, I think I will just file my statement because there is a lot of repetition of the material that has been presented by the California Farm Bureau and the Washington Farm Bureau, director of agriculture, State of California, and I think you have that background.

Mr. RICHMOND. Your statement will be part of the record and we'll be only too happy to hear your personal remarks.

Mr. WILSON. I would just like to address one of the questions raised this morning.

First of all, we feel, we support the legislature and we feel it should go across the board on all commodities. If the cotton producers don't wish to be included, they don't have to be included. It's just enabling legislation. Let's put it across the board and those who wish to use it or have a problem or a need arises, they can use it.

Now the livestock industry's been mentioned here. I know of a lot of livestock producers in the Northwest who are concerned by the consolidation of the packing plants through that area and big feedlots, and they are getting concerned of where they are going to go in livestock marketing. So the need may arise in some areas where livestock producers may need this type of legislation.

Second, the question about the consumer. I think this is in the best interest of the consumer. Now nobody thinks that prices are going to go down. That's unrealistic. But prices are going to rise either at a reasonable rate or an unreasonable rate. And if you don't have some type of protection for these people, these family farmers who are growing these commodities, and they go out of business and you see the continuing consolidation of the processing plants, tremendous consolidation of these plants in the big corporations, not only national corporations, international corporations, and if these producers go out and get control of the industry, improve their control and continue to consolidate, you may have a situation in food like you have in oil. You may have a situation in food where bread may cost you $5 a loaf. You may have a situation in food where milk would be $10 a gallon.

A few years ago we thought that those kind of prices that we're seeing today in gasoline were unreasonable, never reach that level. So I think that this legislation is in the interest of the consumers of this Nation to keep a healthy viable family farm agriculture.

The question of whether to be State regulation or Federal, I think the way the processing corporations are consolidating and growing, it's even a question of whether the Federal Government can be effective in keeping this under control, with the big international corporations.

So I think we do need Federal legislation and some type of Federal bargaining.

I would just like to tell you one story. A young potato farmer up near Moses Lake in Washington got very active and interested in marketing, participating in doing some research of what is happening in the marketing field. He became very much of an activist in the political sense.

One day, 2 years ago this spring, they called our field man and said, "Well, we don't know if we're going to get a contract from the potato processor next year. And we've got all our fertilizer on and we're really concerned that if we don't get a contract, we're just going to be out of business."

Now the processor didn't say that because they'd been to Seattle and involved in some marketing protest and some other things, that was the reason they weren't going to get a contract. They just said they didn't know whether they could get a contract, or not.

And to this day, that young family that was so interested in doing something about the marketing of the commodity and by being active in the political sense have become placid. They are just now producing potatoes, doing the best job they can of producing potatoes for whatever price they can get a contract.

So I do see a need for some type of legislation to give some bargaining rights to the family farmer.

Thank you.

Mr. RICHMOND. Thank you very much, Mr. Wilson.

Our last witness from the State of Washington is Mr. Jerry Heilig, vice president, Washington Potato Growers Association.

[The prepared statement of Mr. Wilson follows:]

STATEMENT OF

DWYTE WILSON
EXECUTIVE VICE PRESIDENT, OREGON-WASHINGTON FARMERS UNION

IN SUPPORT OF
H.R. 3535, the "NATIONAL AGRICULTURAL BARGAINING ACT"

BEFORE THE
SUBCOMMITTEE ON DOMESTIC MARKETING, CONSUMER RELATIONS
AND NUTRITION OF THE
COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES

Sacramento, California
April 18, 1980

Mr. Chairman and Members of the Subcommittee:

I am Dwyte Wilson, Executive Vice President, Oregon-Washington Farmers Union, 10453 Fourth Plain Boulevard, N. E., Vancouver, Washington, appearing in behalf of National Farmers Union, Denver, Colorado. I am pleased to appear before you today to present to you the views of our organization on H.R. 3535, the "National Agricultural Bargaining Act". I speak on behalf of the 300,000 member farm families of the Farmers Union.

Farmers Seek Fairness

The National Farmers Union has for many years supported legislation to give farmers a right enjoyed by millions of other Americans--the right to bargain collectively to set the terms of sale and the prices paid for the fruits of their labor. Over 20 million working men and women in the United States today bargain collectively through labor unions. Their right to do so is legally recognized and protected by the National Labor Relations Act, commonly known as the "Wagner Act".

In the late 1940's, National Farmers Union began to talk about a "Wagner Act" for agriculture. In 1968, the National Farmers Union sought legislation to guarantee farmers the right to bargain collectively with processors, handle s, and other "middlemen." Vice President Walter Mondale and Secretary of Agriculture Bob Bergland were the chief sponsors of comprehensive bills for this purpose in the Congress early in this decade.

Fairness is the central objective of this legislation. The current practice of price negotiation between farmers and food processors is unequal and inherently unfair. Each processor buys raw agricultural products from many individual farmers. The processor has more purchasing opportunities than opportunities available to any one farmer to sell his products. The financial resources of the processor are also superior to those of the farmer.

Finally, the farmer is often negotiating at harvesttime when he has a large investment in a perishable crop which he must sell or allow to spoil. All of these conditions weight the negotiations heavily on the side of the processor.

Farmers lack market power. Farmers must be accorded equity with those to whom they sell their products.

Recent disturbing reports from the U. S. Department of Agriculture demonstrate that farmers need a fair bargaining process today more than they have ever needed it before. On March 25, the USDA reported the results of a new study which shows that economic control over the food processing industry has become progressively more concentrated in recent years.

In 1963, the fifty largest operations in the food processing industry owned 42 percent of the assets in that industry. In 1978, the fifty largest food processing corporations owned 64 percent of the industry's assets. Moreover, the author of the study predicted that at the current rate, these same fifty corporations could own the entire food processing capacity of the United States by the turn of the century.

In the past two decades, the after-tax profits of food manufacturers rose from an annual average of 8.4 percent to an annual average of 13.2 percent. All other manufacturers have an average annual after-tax profit of 11.9 percent. The report also shows that in 1975 foreign investors owned $1.8 billion of the assets in the U. S. food processing industry, and foreign investment is rising rapidly.

These trends forecast a dismal future for both farmers and consumers. In a highly concentrated food processing industry, farmers will receive less for their raw products and consumers will pay higher retail prices at the supermarket. If the projections of this report prove to be correct, within a very few years we may see our food supply as tightly controlled as our oil supply is today. Farmers must have a fair bargaining process.

I wish to emphasize at the outset that we consider collective bargaining to be a supplement rather than a substitute for existing agricultural statutes concerning commodity credit, conservation, extension, research, and other programs essential and fundamental to the economic welfare of farmers. These programs, as we view them, are simply a foundation from which to move to further improve the economic tools of farmers as we seek greater equity in marketing.

Former Efforts Toward Equity

As we renew our efforts to seek equity for farmers in the marketplace, it is useful to review the history of farmers' efforts to improve their marketing conditions. Efforts to improve farmers' marketing power are not new to the National Farmers Union or to national farm legislation.

The National Farmers Union has sought to improve the economic position of American farmers through improved market performance since its founding in 1902. Some of the developments for which we have fought and worked successfully toward this end include:

- Organization of local and regional marketing cooperatives;
- Legal sanction of cooperative marketing activities under the Capper-Volstead Act;
- Gaining access for cooperatives to the terminal markets and commodity exchanges;
- Creation of federal marketing orders; and
- Establishment of public funding for the storage of food reserves, acreage reduction programs, encouragement of on-farm storage, and other programs to reduce or eliminate periodic surpluses that depress market prices and reduce the market power of farmers.

When a farmer does not have to sell in a distressed market burdened by surpluses, he has gained a measure of market power. When a farmer may negotiate fairly the conditions under which his products will be sold and the price that will be paid for them before his resources and his labor have been irrevocably committed, then he, too, has gained market power. When a farmer knows that a fair and enforceable minimum price has been established for his product, he has gained a third type of market power. All of these mechanisms provide the incentive and stabilizing conditions necessary for a farmer to make the commitments required to produce and harvest a crop.

Congress has passed several laws over the years to establish marketing procedures and conditions that enable farmers to market more effectively. Two among these are:

- The Capper-Volstead Act of 1922, which establishes the right of farmers to organize cooperatives to establish transportation and storage facilities and to perform for themselves other marketing services;

  Farmers Union's first national president, Charles Barrett, led an eight-year effort to get this statute adopted.

- The Agricultural Adjustment Act of 1933, which established the right of producers of certain commodities to adopt marketing orders to regulate the flow of products to the market and to establish grades and standards and, in the case of milk, to establish minimum prices and provide for payment of uniform prices to all producers in a market.

An important failing of most federal statutes pertaining to the marketing of agricultural products is that they apply only to specific products or groups of products. While it may be true that one type of marketing or supply management procedure is better suited to a given commodity than are others, the producers of each commodity should be the ones to decide which mechanism to use.

For example, we expect on the basis of experience that the bargaining procedure proposed in H.R. 3535 will be used most commonly to sell products grown or raised on forward contracts. Under current practices, these would include primarily fruits and vegetables grown for canning or other processing, and poultry products. However, farmers raising other types of crops or livestock should not be precluded from using the procedures contained in the bill to negotiate forward contracts for the sale of their products, nor should the farmers who raise processing fruits and vegetables or poultry be precluded from using other marketing and supply management tools such as marketing orders or government-assisted storage.

Farmers have used all of the mechanisms cited above to improve their market power, but legislation to establish a clear legal sanction for farmers to bargain collectively in the marketplace has eluded us.

Some will argue that existing statutes, taken as a whole, give farmers all of the legal authority they need to bargain collectively. That is unfortunately not true. The recent attack on the Capper-Volstead Act by the President's Commission to Review Antitrust Laws and Procedures has demonstrated, with startling clarity, that many of those with responsibility for protecting the public from abuses of excessive market domination by a few large concerns have little understanding of the special conditions of farmers or their cooperatives.

Farmers often must sell in a market where there are few buyers and few alternatives. Existing statutes have improved marketing conditions for farmers, but the development of enabling legislation for effective and direct bargaining with handlers on prices has not yet been satisfactorily achieved on a broad base. Legislation is needed to establish beyond question that farmers have the right to bargain collectively, and that handlers are obligated to bargain in good faith with farmers' associations.

H.R. 3535 Establishes Negotiating Framework

The National Agricultural Bargaining Act, H.R. 3535, is such a bill. I wish to stress that this bill would establish a legal framework in which collective bargaining between farmers and handlers could take place with adequate safeguards for all parties. This bill establishes procedures for organizing and certifying bargaining associations to represent farmers in contract negotiations with handlers. The bill establishes a code of conduct that prescribes the rights and responsibilities of all parties to the negotiations. H.R. 3535 empowers the Secretary of Agriculture to mandate and arbitrate contract disputes, and it prescribes penalties for those who engage in unethical conduct. The most important aspect of the National Agricultural Bargaining Act of 1979 is that it would compel all parties to bargain in good faith once established criteria for representation had been met.

I am proud to say that National Farmers Union has worked closely with other major farm organizations and members of this Subcommittee to develop the procedures contained in this legislation. I believe that the fundamental good sense and fairness of the procedures embodied in H.R. 3535 account for the support of this bill by the National Council of Farmer Cooperatives, the American Farm Bureau Federation, and the National Grange, in addition to the National Farmers Union. The procedures established in this bill are fair and balanced. H.R. 3535 has broad support in the farming community.

At our 78th Annual Convention in Denver, Colorado, last month, the voting delegates of the National Farmers Union voiced their overwhelming support for fair negotiation in agricultural marketing. Attached is a policy statement on domestic marketing policies adopted by our delegates last month.

America's farmers are not asking for any special privilege. We are asking to be permitted to use the same tools now used by other members of society to bargain for a fair deal. We believe that you share our concern that America's farmers no longer be denied a fair, effective, and workable bargaining procedure.

Attachment

EXCERPT FROM NATIONAL FARMERS UNION'S 1980 POLICY STATEMENT

I. AGRICULTURAL PROGRAMS FOR THE FAMILY FARMS

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F. Domestic Marketing Policies

Price support and supply management programs provide a basic framework of protection for agricultural producers in the marketplace by preventing the price-depressing effect of oversupply. Alone, however, they do not sufficiently fortify the weak bargaining position of producers, nor assure fair prices. Additional mechanisms are needed to improve the producer's position in the marketplace.

1. Improved Marketing Mechanisms

National Farmers Union calls upon the Congress to strengthen the Marketing Agreements Act of 1937 to extend marketing order authority to all commodities and to further amend the Act to:

a. Provide for bargaining between elected producer committees and handlers for adequate price as well as other terms of sale;

b. Direct the Secretary of Agriculture to administer market supply control programs when and where necessary, subject to approval by a majority of producers concerned; and

c. Authorize pooling of sale proceeds.

Market orders have proven their worth in milk, fruit, vegetables, and tree nuts. Placing market order authority with these improvements within reach of all producers is urgently needed to assure greater producer marketing power.

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National Farmers Union also reaffirms its support for enabling legislation to establish a National Agricultural Relations Board or separate board for single or groups of closely related commodities, with authority to bring farmers and farm cooperatives together with processors for the purpose of bargaining over prices received by agricultural producers. Farmers need and are entitled to a firm legal procedure which will enable them to manage the production and marketing of their products. Such legislation should preserve, unimpaired, the long-standing rights of farmers to participate in bargaining associations and cooperatives without being subject to antitrust action.

We favor amendment of the Agricultural Fair Practices Act to require the buyers of agricultural products to bargain in good faith with associations of producers.

We support the concept of the Interstate Grain Marketing Compact now being considered by legislatures in 14 major grain producing states. The National Farmers Union will function as a coordinating and information service between the states to assist in securing passage in as many states as possible.

The major commodity markets need to be investigated to determine the positive and detrimental forces that affect commodity prices. If the investigation so indicates, legislation should be drafted to correct the inequities.

2. Pooled Marketing by Cooperatives

We support and encourage efforts now being made by large regional cooperatives to pool sales of wheat and other grains, cotton, soybeans, and other commodities, and urge producer cooperatives to participate in such programs where available.

3. Market Information

The USDA should make full disclosure weekly of grain inventories on hand and report all domestic and export

grain sales for the previous week. In addition, the Department should act as an early warning system, identifying and making public agricultural issues before they develop into political crises.

Crop reporting systems should be based upon honest and accurate reporting of relevant data and should be administered by the Agricultural Stabilization and Conservation Service (ASCS) through local offices and committees.

We urge Congress to fund satellite research programs that are used in weather and crop forecasting, pollution monitoring, sea navigation, and mineral exploration. We also require that this material be made public.

4. Agricultural Census

We commend the Bureau of Census for taking steps to involve farmers in the construction of census forms, shortening them, and alleviating other problems. The facilities of the ASCS should be used in the construction of farm-operator lists. Publication of census information should include statistics which reflect the status of rural community life, such as transportation, education, communications, health, and housing.

We encourage continued collection of needed data relating to the corporate involvement in agriculture and coordination with information collected on foreign involvement in the purchase of farmland and agricultural enterprises to more clearly reflect the patterns of ownership and management of United States agriculture.

STATEMENT OF JERRY HEILIG, VICE PRESIDENT, WASHINGTON POTATO GROWERS ASSOCIATION

Mr. HEILIG. Thank you, Mr. Chairman, I am Jerry Heilig, Moses Lake, Wash. I don't happen to be the individual that the example just stated. It's my pleasure to have the opportunity to present this testimony to you today.

Bargaining in good faith is certainly the cornerstone of any bargaining legislation.

The Agricultural Fair Practices Act of 1967, has proved inadequate as a means of providing an equitable climate whereby producers can bargain on an equal basis with processors.

It is not necessary for us to go back in history to prove this statement, as all the examples that I am going to present are from our own current year, 1980, negotiations.

Washington Potato Growers Association is the only potato bargaining co-op in the State of Washington. The association, which has 227 members, negotiates preseason potato contracts with given processors.

The association members designate Washington Potato Growers Association as the sole bargaining agent for their potatoes.

Approximately, as Bob stated earlier, 85 percent of the total production in the State of Washington is processing potatoes.

In 1980, our association negotiated with the following processors: Lamb-Weston Co., which entails four separate plants, three in the State of Washington and one in northern Oregon; Carnation Co., two plants in the State of Washington; Rogers of Walla-Walla, Twin City Foods, Simplot Co. Simplot Co. is in northern Oregon.

There are two processors that we do not negotiate with. One is Chef Reddy Foods. The other being Sunspiced, a subsidiary of American Potato Co. Both of those plants are in the State of Washington. We do not negotiate with either of these processors because we do not have sufficient members who produce potatoes for those given processors.

This year our negotiations began on January 31, 1980. We still have not finalized all our contracts as yet. Prior to our negotiations, we held meetings with all our growers to determine grower costs of production. This was necessary because of the dramatic increase in most major input costs. The increase in grower costs in January 1980, versus 1979, was a dramatic 20-percent increase. In other words, growers needed a 20-percent increase just to stay even with last year.

When we started our negotiations we were in a very strong position. We had just recently signed 40 new members and growers were solidly behind their bargaining committees.

The majority of those new members were in an area that we previously hadn't had members shipping, so we were kind of excited about that.

The first indication of a problem was on March 21, when processor No. 1 decided that they would not negotiate anymore and presented our association with what they called a final offer. We then called a grower meeting to find out what the growers felt about the offer. It was rejected by a 96 percent vote of our member growers, a vast, vast majority.

The processor indicated to us at the March 21 meeting that if our growers did not accept the contract, they would be going to the field, as the terminology that they used, with the contract. It would be basically an "either, or" situation. We reminded them that the practices as defined in the Agricultural Fair Practices Act, as well as other pertinent legislation, would have to be followed. Our association indicated to them that if they induced a member grower to enter into an agreement that we had not endorsed, that it would be interfering with its business relationships with our members and, further, that they may be in violation of the Agricultural Fair Practices Act.

They informed us that they would be contacting member and nonmember growers, alike. In other words, it was their intention to ignore anything that we told them.

At this stage, our legal counsel sent them a letter outlining the above. Following this, this same processor settled a contract in another case. In view of this, as well as the necessity to clarify misinformation spread by the processor, another grower meeting was held to make sure of the growers' position.

This meeting ended up with the growers accepting the proposal. It was discovered later than considerable pressure was exerted to have growers accept the proposal the second time around.

Then, as if this wasn't enough, this same processor went out and cut grower-contracted acreage by 50 percent and in some instances, more. Hardly the way to build up good grower relations, especially since this very processor complained bitterly that our association having negotiated do not grow for them because they want to maintain a family concept.

As a matter of interest, this same processor also contracted with 17 new growers in one area of the State last year to expand their grower base. This year, 9 of those 17 growers lost those same contracts.

We have two other processors that we've been continuing to negotiate in good faith, to date, and we anticipate that we will resolve all contracts with them.

In fact one of those processors has, we've settled with since this was typed, and we have settlement in both plants in Washington. We have a unique situation where Washington Potato Growers negotiate contracts for growers in the northern Oregon area, and those potatoes, then, are delivered to a plant in Idaho. So we're talking about three-State negotiations in this one particular instance.

A fourth processor has not negotiated in good faith at all. The only offer we got from them was last year's contract which was one of the lowest in Washington to begin with, and a nonapproved one, as well.

They have ignored our legal counsel's letter and have contacted members and nonmembers alike.

To our knowledge, they have not signed any appreciable acreage but they have openly and purposefully defied our organization and the provisions of the Agricultural Fair Practices Act, hardly what you would call good faith bargaining.

A fifth processor has also been unique. This year was the first time that our association has negotiated with them. Two of our meetings were canceled by them because they did not have anything to offer. Then they proposed a settlement to us that was not even close to other contract settlements in the area.

They are currently attempting to circumvent the association by contracting their needs with nonmember growers. They have always been able to purchase potatoes at a lower price because they maintain their own corporate farm of over 9,000 acres of potatoes, which they manage to use very skillfully to keep grower prices depressed.

It should be mentioned here that one of the processors that we do not negotiate with also shares in that farming operation, a joint venture corporate farming operation in excess of 20,000 acres in total.

We don't think that they are going to be successful in securing their needs from nonmember growers and we hope that they will return to the bargaining table.

As an association we've left that door open to them and told them that we are willing to sit down at any time from this time on.

There is one further item that is worthy of note. It seems to us that it's an unbelievable coincidence that most potato processors in all parts of the country, and I'm talking about all of the United States, decided that a 7-percent increase was the maximum that they were going to pay.

Another thing that bothers us a little is how one processor knows exactly what has happened in our negotiations with another processor.

We know that some farm groups are not in favor of this legislation at this time. It is anticipated that these organizations will see its value as time progresses.

It should be noted that no commodity or organization is affected by this legislation until such time as its producers voluntarily request accreditation under the act.

The most dramatic need for this legislation appears to be in the fruit and vegetable industry. If other commodities are not supportive of this legislation, we would support limiting the legislation to the fruit and vegetable industry.

I think that our position is such that we recognize the value or the possible value to all commodities but if that's not possible, we certainly don't want to lose the legislation because of it.

Mr. Chairman, we urge you to support this bill. This type of legislation is absolutely essential if good faith bargaining in agricultural commodities is to become a reality.

We are not from the State of California and we sincerely appreciate the opportunity to be able to come down and present our views and to testify.

Thank you.

Mr. **Richmond**. Thank you, Mr. Heilig.

Mr. Panetta.

Mr. **Panetta**. I want to thank all of you for your testimony. Some of you have appeared before and talked about the problems in your particular area. Let me ask you if, in the State of Washington, there is any law that deals in the area of fair bargaining in agriculture?

Mr. **Heilig**. We have none.

Mr. **Panetta**. You don't have any State protection?

Mr. **Heilig**. We have none at all, no.

Mr. **Panetta**. Have you, in fact, ever litigated any issues under the Fair Practices Act?

Mr. **Heilig**. As an association?

Mr. **Panetta**. Yes.

Mr. **Heilig**. No, we have not ever attempted to do that. We have certainly considered it very strongly to file a complaint with the Department.

As you know, there are basically three ways you can go about it, none of which are very effective. And so it's been, you know, we've considered it this year. We may still do that in the future, depending on the outcome of the remainder of our negotiations, because they are still ongoing. But up to date, we have never filed a complaint or entered into any litigation with any processor.

Mr. **Panetta**. What percentage of the potato farmers are members of your bargaining association?

Mr. **Heilig**. We have approximately 70 to 75 percent of the potato process acreage of member growers.

Mr. **Panetta**. The remaining growers who aren't part of the bargaining association, are they large potato growers or small?

Mr. **Heilig**. Well, if you talk about total acreage, obviously, the majority are large. There is a very small number of extremely large growers who are not members of one I mentioned here. Most of the small growers are members. There is a very, very few number of small growers that are not members of the association. Mostly corporate operations that are not membership.

Mr. **Panetta**. Mostly corporate?

Mr. **Heilig**. Yes.

Mr. **Panetta**. Thank you very much. Thank you, Mr. Chairman.

Mr. **Richmond**. Thank you, Mr. Panetta.

Mr. Glickman.

Mr. **Glickman**. No questions.

Mr. **Richmond**. Mr. Nolan.

Mr. **Nolan**. I have no questions. But, I have really been impressed this morning with the quality of the witnesses and the testimony offered the subcommittee.

I want to make a note of the fact to the rest of the subcommittee that we've just had the Farm Bureau and the Farmers Union testifying in support of this bill, and that is something that doesn't happen very often in hearings of agriculture committees. [Laughter.]

Now this is either a testimonial to the fact that the farm people are getting together to solve their problems in a way that they haven't in the past, or it's one heck of a testimonial to the legislative craftsmanship of our colleague, Mr. Panetta from California. I suspect it's a bit of both.

Mr. **Richmond**. I will join Mr. Nolan. It's certainly a credit to Mr. Panetta, whose bill, H.R. 3535 has been so attractive to both unions.

Thank you, gentlemen.

Before we start with our next panel, we will have a 30-minute break for lunch.

[Whereupon, the subcommittee recessed at 12:20 p.m., to reconvene at 12:45 p.m.]

AFTERNOON SESSION

Mr. RICHMOND. The subcommittee will be in order.

Our next panel is Mr. Leslie A. Rose, vice president, Apricot Producers of California; Mr. Lauren Campbell, Apricot Producers; Mr. Ivan Bays, Wesley, Calif.; Mr. Bill Kessloff, walnut commodity chairman, Farm Bureau; and Mr. Paul Johnson, Golden State Walnut Growers Association.

Are those gentlemen here now? Is Mr. Les Rose here?

Mr. ROSE. Yes, Mr. Chairman.

Mr. RICHMOND. Good afternoon, Mr. Rose.

STATEMENT OF LESLIE A. ROSE, VICE PRESIDENT OF OPERATIONS, APRICOT PRODUCERS OF CALIFORNIA

Mr. ROSE. Thank you. My name is Leslie Rose and I am the vice president of operations for the Apricot Producers of California. As an agency which has spent the last 6 years establishing itself as the bargaining agent for apricot producers, we are intimately familiar with the struggles and frustrations encountered in becoming a bargaining association.

Because we have found that existing law, both State and Federal, can create more problems for the bargaining processes than prevent them, we strongly support the passage of H.R. 3535, the National Agricultural Bargaining Act, as introduced by Representative Leon Panetta.

We know the bill to be not an effort to gain unfair advantage in the bargaining process but, rather, an attempt to provide a stable, fairly regulated environment within which more meaningful bargaining can take place.

The provision for good faith bargaining in H.R. 3535 offers no more potential for bargaining associations to become bastions of monopoly than that which they now possess. With association membership remaining voluntary and with no burden of manatory purchasing and price settlement upon processors, the determining factors which rule the bargaining process remain, first and last, market conditions.

Cost studies clearly demonstrate that the critical factors in rising food prices are the ever-escalating costs of packaging, energy, transportation, and direct labor.

Bargaining associations seek fair and reasonable prices that will keep their growers and ranchers in business. Only the most foolish and irresponsible seek opportunistic prices. Doing so destroys the very markets and customers they need to survive. This is the quickest lesson the successful young bargaining association learns.

Instead, bargaining associations know that they need to curb excessive price fluctuation and build stability in marketing their crops. This is why such thing as grade standards, quality of production. efficient harvesting and industry communications are viewed as important as price determination. In practically every commodity, including our own, it is that association which is taking the lead in these important areas. Handlers directly benefit from their work as well.

H.R. 3535 will help the formation of associations necessary to achieve such goals. Indeed, our own organization spends more time explaining to its members why prices can't be higher than they are than it does negotiating with handlers to pay more than they usually offer. All bargaining associations must, in their members' best interest, remain sensitive to the dependency producers have on the rest of the food chain. Price sensibility, though it must represent profitability, is a matter of survival in commodity bargaining.

Another charge is that in stating handlers must meet with accredited associations and bargain in good faith, the proposed act unjustly bolsters the power of bargaining associations and insures their financial wealth and position, while creating an uncompetitive posture for the nonmember producers. This again is a deceptive point, inconsistent with the association experience. The implication is that bargaining associations should have enough growers to effect a strong bargaining position without the need for H.R. 3535; that the bill somehow artificially forces handlers in the direction of having to deal with only association members and not with independent producers.

First, most associations don't want all producers of a commodity in their ranks, primarily for reasons of quality production, or lack of it. Second, most non-member growers avoid membership not because they feel the association isn't necessary or that the handler is their true friend, but simply because they don't want to part with dues or retain contributions and are content to take a free ride from their fellow producers who fund the association. H.R. 3535 doesn't change this condition; there can be a fair number of independent producers with whom handlers may deal.

H.R. 3535 then does not intend to threaten the competitive posture of any producer. More influential in the regard is what the association does to attract the most efficient growers and highest quality production to its efforts and how professionally it handles itself.

What we see as vital in H.R. 3535 is its protection for associations from the deliberate disruptive use of nonmembers and members alike to subvert the goals of the bargaining association. Such activity is possible regardless of how much volume of a commodity's production the association controls. This is why the bill's unfair practice definitions, spelled out across the Nation, are so important. Equally important are the specified enforcement alternatives that provide, when all other private methods may fail, the promise of some form of fair judgment on issues.

This is the activity that we see H.R. 3535 rightfully aimed at. It is a measure which guarantees no excessive power to either handler or producer. We view it as refined enabling legislation which augments the general concepts of Capper-Volstead and sets reasonable and enforceable standards of bargaining performance.

For the most part, we feel the relationships between established bargaining associations and handlers will remain as they are under H.R. 3535. We would apply for accreditation and expect the Act's provisions to be honored. But they contain no radical departures from the understandings we now have with some of the handlers we presently do business with, where the use of arbitration is used to settle price impasses. Contracts will remain the governing force in sales to handlers. But where contracts are ignored, and State laws weak in setting good faith guidelines, H.R. 3535 can provide a bottom line to which both bargaining parties must observe. Although the measure rightfully leaves much conduct to the parties, themselves, it can keep us all honest.

For this reason, we feel the fears of an ungainly and costly bureaucracy to administer the law's provisions are unfounded. New associations meeting opposition to their existence would undoubtedly seek accreditation and use the Act's provisions as an aid to establish themselves as an effective bargaining unit. Its strongest value, though, lies in just being a comprehensive umbrella under which bargaining roles are more clearly defined and being an incentive to conduct meaningful bargaining activities at the local level.

Agriculture is a champion of reducing Goverment interference and regulation in business, including the marketing of agricultural products. Our association agrees with this need, that there is much that could be done to free the system up and make agriculture more productive. So asking for this legislation, H.R. 3535, is not easy. We do it only because it is necessary.

H.R. 3535 is not anticompetitive, inflationary, or opportunistic. It is the proper balance between the free choice of bargaining parties to act responsibly and professionally and the regulation needed to prevent injury by those who will.

We need its defined procedures, its stated unfair practices. At stake is the economic integrity of our Nation's food producers. The future may well prove them to be our greatest asset, worth protecting.

Thank you, Mr. Chairman.

Mr. RICHMOND. Thank you, Mr. Rose.

Mr. Lauren Campbell.

STATEMENT OF LAUREN CAMPBELL, VICE PRESIDENT, APRICOT PRODUCERS OF CALIFORNIA

Mr. CAMPBELL. Mr. Chairman, I have a written statement that I've handed in that is somewhat repetitious to what has been said here already, so if I could request that it be put in the record, I'd like to say a few off-the-cuff remarks.

Mr. RICHMOND. Without objection.

Mr. CAMPBELL. My name is Lauren Campbell and I am a diversified farmer in Patterson. I grow apricots and tomatoes, mainly. I also grow lima beans and a few other nut crops. I am the third generation of a family farming operation and I have a son who would like to be the fourth.

After being involved as president and now vice president in charge of Government relations of the apricot association, I feel, after some 20 years of working on bargaining for apricots that, although I am basically opposed to having Government intervention and help in agriculture, that this is the only way to go if the smaller type family farmer, such as most of the apricot growers are, is to survive and keep this business going down through the years. Therefore, I am very strongly supportive of H.R. 3535.

[The prepared statement of Mr. Campbell follows:]

Prepared Statement of Lauren Campbell, Vice President, Apricot Producers of California

My name is Lauren Campbell and I own 226 acres of apricots in Patterson, California. I harvest approximately 2,400 tons of apricots annually. I also farm tomatoes and lima beans.

I am a member of Apricot Producers of California. I have served actively in the Association since its organization in 1961, serving as a Director, President and am currently the Vice President. I am also a member of the Farm Bureau.

I am here today to show my support for H.R. 3535. Being closely involved in the Apricot Association, I have witnessed many instances where the livelihood of the family farmer was seriously jeopardized by the actions of the handler. In most cases, if we had a stronger bargaining code, the whole matter could have been avoided.

My own experience in the past has made it apparent to me that a stronger bargaining code is needed.

It was prior to apricot harvest when I was approached by a handler regarding my fruit. The handler knew I was involved in the association and he wasn't too keen on the idea. He told me that if I would get out of the Association, he would make a deal with me to buy my apricots and my tomatoes. But he warned me that if I ever told anyone that he propositioned me, he would definitely deny everything. Naturally, I didn't withdraw from the association and they did negotiate with the association that year for price. He bought my apricots that year because he also wanted my tomatoes and I wouldn't sell one without the other.

A case similar to mine, which affected a gentleman who is deceased now, ended less favorably. This gentleman was also propositioned to withdraw from the association. He did not, but the handler would only purchase his fruit on a day to day basis. The handler would not sign him up on a seasonal contract. After delivering his apricots for a couple of days, the handler decided he didn't want anymore fruit so the grower lost the remainder of his apricots. The handler had discriminated against this grower because he was a member of the Association. He was also on the Board of Directors.

This handler tried to put pressure on more than one grower to get them to withdraw from the Association.

In today's market, everything and everyone is organized. Truckers are organized, laborers are organized and even the handlers are becoming organized into fewer and larger entities. I feel that farmers must also be organized if the small family farm is to survive. Family farms need the protection of a bargaining association in order to gain some security in their operations.

The passage of H.R. 3535 will not increase inflation, as stipulated by opponents of the act. The amount of money that the farmer gets for his raw product is very little compared to the net retail price of the end product. Cost studies clearly show that the critical factors in rising food prices are the ever escalating cost of packaging, energy, transportation, and last but not least, labor costs.

The National Agricultural Bargaining Act, H.R. 3535, is legislation that is needed because it requires good faith bargaining and eliminates unfair trade practices.

I strongly support H.R. 3535 because I feel without it, the small family farming operation is seriously jeopardized. I urge you to support this bill also.

Mr. Richmond. Mr. Ivan Bays is next.

STATEMENT OF IVAN E. BAYS, PRESIDENT, APRICOT PRODUCERS OF CALIFORNIA

Mr. Bays. Thank you, Mr. Chairman. I have written testimony that I have submitted and I would like that put in the record and I would like to make a few comments.

Mr. Richmond. Without objection.

Mr. Bays. My name is Ivan Bays and I farm in the Westley area, a diversified farmer, mainly apricots. At the present time, I am president of Apricot Producers of California, a bargaining organization. I am a member of the California Farm Bureau and also a member of a co-op cannery and a district adviser.

I am very much in favor of H.R. 3535 and I would like to go on record as supporting it.

Mr. Richmond. Thank you, Mr. Bays.

[The prepared statement of Mr. Bays follows:]

PREPARED STATEMENT OF IVAN E. BAYS, PRESIDENT, APRICOT PRODUCERS OF CALIFORNIA

My name is Ivan E. (Gene) Bays and I own 660 acres of apricots in Westley, California. I harvest approximately 5,000 tons of apricots annually.

I am a member and the President of Apricot Producers of California, a bargaining association, and I am also a member of the Farm Bureau. I belong to a large co-op cannery of which I am a District Advisor.

I am pleased to have this opportunity to testify today in support of the National Agricultural Bargaining Act, H.R. 3535, by Rep. Leon Panetta.

Apricots Producers of California has had instances where the need for a stronger bargaining code was evident. We have had the parties involved submit written testimony. It has been our experience that handlers sometimes fail to recognize an association as a bargaining unit for their members. Handlers sometimes deal with the member directly, bypassing the Association.

We have also had instances where handlers had discriminated against growers because they were a member of an Association.

I am not saying that we have these problems all the time, with all the handlers. All I'm saying is that these things can and do happen. We have had problems in the past, but we are in pretty good shape now. We realize that other bargaining associations are having problems. We also realize that what affects one association can also affect another association if the problems are not resolved quickly.

We support H.R. 3535 because we feel bargaining in good faith, as stated in the bill, is essential. By requiring mutual obligations for a handler and an accredited association to meet at reasonable times and for reasonable periods of time for the purpose of negotiating, we feel that this would provide an outlet where differences can be aired and perhaps a favorable agreement can be achieved. But when there is no obligation to meet, how can mutual terms be agreed upon?

We feel that a stronger bargaining code that delineated the rules for negotiating, as does H.R. 3535, is needed. By requiring good faith bargaining and eliminating unfair trade practices, the National Agricultural Bargaining Act would protect the small family farmer and offer him a small sense of security that something positive is being done to protect him in the market place.

There are unions to protect the laborers who harvest the fruit, unions to protect the truckers who haul the fruit and unions to protect workers who process the fruit. Why is it too much to ask for an organization, in the form of an accredited bargaining association, to protect the farmers who produce the fruit?

I firmly support H.R. 3535, the National Agricultural Bargaining Act, and I feel that it is necessary legislation that has been a long time coming.

STATEMENT OF BILL KESSLOFF, WALNUT COMMODITY CHAIRMAN, LAKE COUNTY FARM BUREAU; PRESENTED BY BOB WOLFE

Mr. WOLFE. Mr. Chairman, Mr. Kessloff was unable to be here so he asked me to present his statement. My name is Bob Wolfe and I am the executive secretary of the Lake County Farm Bureau.

Mr. Kessloff is a walnut grower of 140 acres. He is a director of the Lake County Farm Bureau and also recently appointed as director of Golden State Walnut Growers Association.

This is Bill's statement:

My statement will be brief and sincerely factual.

I have traveled many miles up and down the State, talked to many growers, small and large, and my testimony represents a summary from many growers throughout the State of California.

Ninety-eight percent of all walnuts grown in the United States are grown in California. Because all but 9 of our 58 counties produce walnuts, some serious communication and transportation problems for our product exist between grower and handler. We, as growers, are at the mercy of processors since we have only five major independent handlers purchasing 52 percent of our State's total tonnage. The balance is processed by one cooperative.

The passage of H.R. 3535 will increase the grower's credibility and decrease the geographical barriers.

I feel very fortunate to have the opportunity to express facts concerning the grower's problems. I feel unfortunate to be producing a commodity, having worked all year without having any idea of what return that commodity will bring, even after I have shipped my product to the processor and he is already on his way making a profit with my product, and is unwilling to discuss price.

Opposition claims this bill is anticompetitive, inflationary, and an infringement on freedoms. They make these statements because they fear mandated open communication with their client, the grower.

This bill should be called the National Communications Act. Processors have had it too good for too long.

In 1978, walnut growers were paid 68 cents a pound and the consumer paid 99 cents a pound in the stores. In 1979, walnut growers were paid 38 cents a pound and the consumer still paid 99 cents a pound.

Consumers of walnuts will not pay more because of this bill. It does mean that profits will have to be more equally divided. The scale needs to be balanced.

This is not inflationary. Processors will continue to pay minimum prices to the grower and refuse to communicate unless we have good faith communication. No one believes and understands the free enterprise system any better than the farmer, but he needs the opportunity to communicate.

This is not anticompetitive. It will simply put everybody on more equal terms and eliminate the bureaucracy of total and absolute control that processors of walnuts have accumulated. We do not want to mandate prices. We only want to have the opportunity of making a reasonable profit and the capacity to influence the terms of the sale.

Different farmers continue to receive different prices from the same process. For example, I received 38 cents a pound for walnuts while a grower in Hollister received 50 cents a pound.

Growers have been so concerned about a home for their walnuts that processors are getting in the habit of telling growers to take it or leave it without further communication.

H.R. 3535 will eliminate unfair practices of buying walnuts prior to establishing a price with the grower. The bill would stabilize prices eliminating high followed by low prices as in the crop year of 1978 and 1979. And, consequently, will enhance the export market as well as our domestic market.

The passage of this bill will increase the efficiency of the farmer and increase production because it will motivate the farmer to utilize cultural practices year after year, just knowing he has a voice and a chance to influence his future.

You may find this hard to believe but in 1978, growers told the processors that they were paying too much for walnuts and hurt the industry. They came back the following year and didn't pay enough to cover costs.

This bill would allow our industry to sit down and to mutually solve these problems.

Growers throughout the State would certainly use the provisions of this bill and I believe many associations would certainly request accreditation.

Farmers are your hardest working citizens who are tired of the "big stick" policy used by processors, and are certainly hopeful that you will consider the truths and the long overdue needs of the farmer and help in the passage of the bill.

Thank you for the opportunity to express these views.

Mr. RICHMOND. Thank you, Mr. Wolfe.

Mr. Paul Johnson, Golden State Walnut Growers Association.

STATEMENT OF C. PAUL JOHNSON, PRESIDENT, GOLDEN STATE WALNUT GROWERS ASSOCIATION

Mr. JOHNSON. Mr. Chairman, members of the subcommittee, since the hour has progressed and much of the material has been covered, my testimony will be quite short and, in some cases, cover some of the area that Mr. Kessloff has covered.

My name is C. Paul Johnson. I live at 31618 Road 148, Visalia, Calif. I am a grower of walnuts, fruit, and row crops. I am president of the Golden State Walnut Growers Association, an independent walnut growers bargaining association as set forth under the Capper-Volstead Act. I also serve on the board of directors of the California Farm Bureau.

I am here today to testify in support of H.R. 3535.

The walnut industry is a growing industry in California. Most of the U.S. production is in California. In 1959, the production was 63,000 tons. In 1969, 106,000 tons. And, in 1979, 207,000 tons. In recent years, new tree plantings have averaged about 7,000 acres per year. Improved production practices and new varieties have also contributed to larger crops.

The industry is about equally divided between cooperative growers and independent growers. On the independent side, many of the handlers are also sizable producers, owning and leasing substantial producing acreage. In addition, because of the high cost of development, some growers go to independent handlers for development financing. Another group of growers find themselves short of production money, especially at current high interest rates, and go to the handlers for money. Thus destroying their bargaining position. That leaves the grower who is truly free from any strings to be in a very weak bargaining position. In an over-supply year, the handler may take the position that he will accept the grower's crop but will give him only what he can.

This past year, the industry did not have a base field price until after most of the crop was in the processor's hands. This procedure resulted in an average field price 40 percent below the previous year.

When field prices swing so violently from year to year, the industry suffers. The grower's returns may fall below the cost of production and all marketing sectors of the industry suffer from an unstable market. Marketing conditions are in chaos.

The passage of H.R. 3535 would add a valuable tool to the industry. It would give the free market grower the opportunity to negotiate with handlers without the threat of being retaliated against. Walnuts are a perishable crop. They will turn rancid unless properly stored and are also subject to worm damage after harvest.

Walnuts are produced in southern Europe and also in China. Therefore world economic competition would not permit the price from getting out of line.

Our domestic consumer would benefit from fair, consistent prices, avoiding many of the unmerited market fluctuations. I respectfully request your passage of this legislation.

Mr. RICHMOND. Thank you, Mr. Johnson. Mr. Panetta.

Mr. PANETTA. I want to also thank all of you for taking the time to present your testimony. My family is in the walnut business and we have experienced some of the problems that you're talking about.

It is a process that presents a tremendous amount of instability after paying what are substantially high costs in order to get that crop picked, get it hulled, get it dried and get it sold. The costs are tremendous. Lately there have been some pretty good prices in the market but it's been an up and down situation.

There is a need for stability, there is a need for trying to develop a better approach.

Anyway, I thank you for your testimony, all of you. I appreciate your presenting it. It will be helpful to the committee in deciding which way we go.

Mr. RICHMOND. Thank you, panel, we certainly appreciate your coming.

Our next panel is Mr. Nick Bellino, freestone peach grower, Escalon, Calif.; Ron Schuler, president, California Canning Peach Association; and Mr. LeRoy Thomas, California Canning Pear Association.

Who is representing Mr. French?

Mr. THOMAS. I am.

Mr. RICHMOND. Go ahead, Mr. Thomas.

STATEMENT OF MORT FRENCH, PRESIDENT, CALIFORNIA CANNING PEAR ASSOCIATION; PRESENTED BY LEROY THOMAS

Mr. THOMAS. Mr. Chairman, members of the hearing panel, my name is LeRoy Thomas. I am a pear grower in the Big Valley area of Lake County, Calif. I am past president of the California Canning Pear Association and currently I am serving as a member of that board.

The statement Mr. French would have given is as follows:

Our association is a bargaining cooperative responsible for establishing a price for the State's crop of bartlett pears for processing and for the terms and conditions of their sale.

Our cooperative has been in existence for over 27 years, and is a professionally managed association whose function is recognized and understood by the processors with whom we deal. We have more than 400 members in California and one Oregon grower among our members. The processors with whom we bargain represent a wide gamut of kinds of enterprises ranging from those held by large co-op conglomerates to locally owned marketing cooperatives.

Our association is in favor of H.R. 3535. We feel that it will be of special use to bargaining associations that are just beginning or are younger and are less well established than our own.

We believe that we would have no difficulty qualifying as an accredited bargainer for our growers under the provisions of H.R. 3535 and could learn to function effectively under its requirements.

We find no fault with the sections of H.R. 3535 dealing with mediation and arbitration, administration, review, enforcement or any of the other provisions of the act, as they now read.

Our California Canning Pear Association has labored long and hard to protect its members and to assure them of receiving a reasonable return for their bartlett pear crops. We have attempted to deal amicably at all times and have operated in a manner designed to keep the health of the processing industry in mind, as well as the economic well-being of our own members.

We believe that H.R. 3535 will be a forward step in this direction and therefore endorse it wholeheartedly.

I thank you.

Mr. Richmond. Thank you, Mr. Thomas.

Mr. Dennis Icardi.

STATEMENT OF DENNIS N. ICARDI, SECRETARY-TREASURER, CALIFORNIA CANNING PEACH ASSOCIATION

Mr. Icardi. Thank you, Mr. Chairman, members of the committee.

I am Dennis Icardi, assistant manager and secretary-treasurer of the California Canning Peach Association, a grower bargaining and marketing cooperative. The California Canning Peach Association presently represents nearly two-thirds of California's cling peach producers. Our association is the oldest continuously operating bargaining cooperative in America. We were first organized in 1922.

I am here to testify that bargaining for farm products does work and should be encouraged. We have been able to achieve success by keeping our members completely informed of association and industry activities. Each year we seek, not the highest possible price, but a reasonable price that will provide a return for our farmer members based on current economic and market conditions.

We have contracts of sale with all California cling peach processors and our board of directors works hard at maintaining the credibility with handlers. By doing so, we have improved the responsiveness of our canner customers through our bargaining efforts and we have increased our representation among peach growers.

Like much of agriculture, our industry has changed greatly in recent years. The handlers have become fewer but larger. Many are subsidiaries of large conglomerates. The grower does not have the opportunity to visit with the decisionmakers. He only sees a processor representative and that representative is primarily an expeditor, one who carries the message of what the price will be and signs the commodity contract of sale with a farmer.

Our experience tells us that commodity bargaining success can be accomplished through established credibility, direct communication, and plain hard work. But realize that I speak of our own industry, cling peaches, where we have had bargaining as a method of price discovery for over 50 years.

We have been fortunate in having good grower support and leadership which has maintained our credibility with the processors, the necessary component in achieving a fair and reasonable price through negotiation.

Growers of other commodities throughout this State and throughout the Nation who would like to form bargaining associations have experienced extreme difficulties primarily because handlers fear bargaining. We have met with other commodity groups to encourage bargaining and have experienced the negative attitudes of processors, who perceive bargaining as a loss of their unilateral economic power.

When both growers and handlers sit down together to discuss and understand each other's problems, there is the realization that both have a mutual interest in seeing their commodity prosper. The word "fear" can be eliminated from the process and there will be a stabilizing effect implanted which will benefit everyone over the long run.

H.R. 3535 provides the enabling provisions whereby growers can join together and initiate bargaining efforts within a balance-of-power framework. Over the long run, this will result in maintaining the continued variety of products grown by American agriculture for the American consumer and for our necessary export markets. It will provide an orderly and stabilizing price discovery procedure at the farm level and, as you know, this is particularly critical in order to prevent wide price swings for commodities and to maintain a balance in supply against demand.

Processor arguments in opposition to this legislation are unfounded and cannot be supported. Their arguments are inspired mostly from fear and lack of knowledge of the bargaining process and no one can negotiate properly from fear.

When growers and handlers exchange solid and meaningful facts with one another and write fair contracts representing the views of both sides, the particular commodity industry will continue to be productive with room for reasonable margins for both parties. This has been our experience with California cling peaches.

H.R. 3535 is a step in the proper direction and should be enacted into law. Its provisions are enabling only and it clearly does not mandate bargaining. It does, however, provide the opportunity to enter into the bargaining process where a need for bargaining exists.

Gentlemen, we thank you for holding these field hearings in California so we can present our views to you. And we ask you to support H.R. 3535.

Thank you.

Mr. RICHMOND. Thank you, Mr. Icardi.

Mr. Panetta.

Mr. PANETTA. Mr. Icardi, your association represents about two-thirds of California's cling peach producers?

Mr. ICARDI. Yes, sir.

Mr. PANETTA. You were first organized in 1922?

Mr. ICARDI. Yes, sir.

Mr. PANETTA. In that period, from 1922, have you increased, decreased, stabilized, what's been your membership, let's say, over the last 10 years? Has it gone up or down, or what?

Mr. ICARDI. We've increased our membership over the recent past few years. In 1973, we were about 39 percent of the membership, tonnagewise in the State. Now we're at approximately 62 percent.

Mr. Panetta. When you do bargaining, how many canners and processors do you deal with in the course of a bargain deal? Or do you set one bargain, one contract for the State?

Mr. Icardi. There are 13 processors in the industry. However, four of those processors are cooperative marketing processors. We really negotiate with approximately nine individual proprietary canning companies.

Mr. Panetta. Do you do it at one time or do you do it separately?

Mr. Icardi. Individually.

Mr. Panetta. There are contracts that you set up with each of those. Are they similar in terms of price?

Mr. Icardi. Yes.

Mr. Panetta. You do it individually with each of the processors in terms of separate contracts for that particular area that's involved?

Mr. Icardi. Well, we represent all of our members and establish a price of all of our members for the commodity that they deliver to that processor.

Mr. Panetta. I see.

Mr. Icardi. We make every effort to have agreement throughout the industry in terms of that price.

Mr. Panetta. What's your price this year?

Mr. Icardi. The season price has not been established as yet.

Mr. Panetta. What was the price last year?

Mr. Icardi. $150 per ton, base price.

Mr. Panetta. Have you at any time in the history of your association ever had to implement the California law regarding fair trade?

Mr. Icardi. Not to my knowledge, no.

Mr. Panetta. Thank you.

Mr. Richmond. Mr. Glickman.

Mr. Glickman. No questions.

Mr. Richmond. Mr. Nolan.

Mr. Nolan. No questions, thank you.

Mr. Richmond. Thank you very much gentlemen. We certainly appreciate your coming.

Our last panel is Mr. Eugene Boone, president, Frozen Food Co., Modesto, Calif. He is accompanied by Mr. John Inglis. Mr. Lawrence A. Taber, Canners League of California; Mr. Adin Hester, Olive Growers Council, Visalia, Calif.; and Mr. Leslie Melville, olive grower from Corning, Calif.

Mr. Boone.

STATEMENT OF EUGENE BOONE, FARMER AND PRESIDENT, FROZEN FOOD CO.

Mr. Boone. Mr. Chairman, members of the panel, staff, ladies and gentlemen, I am billed as two different people here. In my own testimony I say I'm a farmer and in the bulletin that was put out by the committee, they say I am a frozen food processor.

Perhaps I should straighten out the mystery. Some 36 years ago I got into the frozen food business to help market some of the products of the farm. I've been in the frozen food and the farming business ever since. Uncle Sam, through the IRS, classifies me as a farmer so that's what I claim to be in my testimony. I am not two different individuals.

First, I would like to say that it is customary to say that I am happy to be here to testify on a proposed piece of legislation. In this case, I must say the opposite. I am unhappy to be here to testify against H.R. 3535.

As a farmer, not as big as many in this room, but nevertheless a farmer, I am saddened by having to give testimony contrary to that given by many here today.

We all recognize a problem in marketing agricultural products. We differ on the solution.

Let me relate to the Scottish poet, Robert Burns, who said, "The best laid plans of mice and men often go awry." In the case of agricultural marketing, much has gone awry. But, in looking for the solution, we seem to compound our dilemma because we fail to spot the real problem in the first place.

Many proceed to implement an elaborate plan based on faulty premises. The result is predictable, "it won't fly."

H.R. 3535 falls into this category. We come into the world gasping and trying to muster strength to survive. We leave this world gasping our last. In between we are expected to compete to the best of our ability to lead a happy, useful, and satisfying existence.

The proposed H.R. 3535 fails to recognize the fact that we are supposed to compete and struggle. It wants to make it easy for all to survive by sticking the processor, who should really be our best ally.

The law of survival of the fittest makes it certain that some should succeed and some must fail. The way to make the fail group smaller is to improve our sales outlets and opportunities and I propose that if we keep working on delivering a quality product by insisting that our Government balance its budget, by insisting our Government establish a sound dollar, by removing trade barriers, by selling in the international market, not giving our products away. I say that former Secretary of Agriculture Earl Butz certainly understood this. He happens to be a member of our board of directors of our frozen food company.

By insisting that we wipe out our trade deficit, by fostering research and development, by relying on ourselves and forgetting the Government bureaucrats, by removing the greater part of the regulations that developed during the 1960's and 1970's, since they simply are counterproductive.

Now I have eight pages of testimony and I don't propose to read this because it's not necessary.

Mr. RICHMOND. Well, we will put your written statement in the record.

Mr. BOONE. I would like to only go over the first page and a half, if I may.

Mr. RICHMOND. All right.

Mr. BOONE. It sets the stage for what follows.

I am opposed to this legislation because without any record of abuse in the procurement process or any showing of necessity for this legislation the bill, by coercing producers into associations and by forcing buyers to deal with those associations would eliminate the freedom of buyers and sellers to provide associations of producers with an unwarranted, inequitable advantage in the bargaining process and the ability to impose anticompetitive terms on buyers. And would compel the creation of a mammoth regulatory body, whose operations would be complex, cumbersome, time consuming, and expensive.

I wish to make one point clear at the outset. My opposition to this type of legislation is based on its coercive aspect, which would impinge on the freedom of producers and processors, alike. I do not oppose the formation of bargaining associations or the concept of bargaining. Current law authorizes bargaining associations and, moreover, protects those who would associate in them from coercion, intimidation, or from boycotts, which would interfere with them.

Some frozen food packers bargain annually with such associations.

And you've heard some testimony from Mr. Porter and others here this morning and he happened to be talking about our company as one of those who was bargaining with their group in King City.

Voluntary associations and voluntary bargaining do not give rise to the problems that a mandatory system would pose. However, even voluntary bargaining associations have not experienced significant success in the frozen food industry. The reason is that the present system operating in our industry, that of contract buying for agricultural products by processors, is characterized by strong competition among processor-packers for the output of producers, making it unnecessary for the producers to associate to sell their products on terms advantageous to themselves.

So, on balance, I feel, as a farmer and as a president of a frozen food company, I have to be against this legislation.

The balance of my testimony I would like to have included in the record, if I may.

Mr. RICHMOND. Without objection.

Mr. BOONE. I thank you for the opportunity.

Mr. RICHMOND. Thank you, Mr. Boone.

[The balance of the prepared statement of Mr. Boone follows:]

BALANCE OF PREPARED STATEMENT OF EUGENE BOONE

So that you might appreciate the disruptive, anticompetitive impact this legislation would have on the system of contract buying of agricultural products by frozen food processors, I will briefly describe how the system operates:

1. Despite the cyclic nature of agricultural marketing activity, grower handler contracts and discussions are part of a year-round system. The activity leading up to a contract and thereafter to harvesting and processing often includes evaluation of the crop history of each field in terms of the crops which have been grown on it and the quality, yields, fertilization program, weed control practices, irrigation facilities and soil analysis; methods of spreading the harvest and processing season in manageable proportions must be considered; the grower's ability to handle the crop with available equipment, the labor that he can muster, and the equipment and supplies to be furnished by the handler and many other factors, are a necessary part of preparation.

2. These activities cannot be postponed until planting time but, in many instances, must be undertaken and pursued for months in advance, so that a contract, if one is agreed upon, may be concluded well ahead of the leadtime required for soil preparation.

3. During the negotiations the handler may be discussing a contract with other growers and the grower may look to other handlers and may consider alternative crops, in the event that no agreement is reached.

4. When the contract is signed, it contains provisions for specific parcels of the growers land, a stated number of acres or pounds, and the defined seed varieties to be used. It may prescribe a planting schedule to ensure an orderly harvest with expected maturity dates staggered to accommodate both the grower's and the processor's capacities to handle the product.

5. Once planting starts the processor's fieldmen will be observing, advising, and estimating maturity dates of the grower's crop. They will counsel and assist in the treatment of pest, weed, disease, irrigation, and fertilization problems.

6. When the crop is harvested all available information related to crop technology, including chemicals used, their frequency and rate of application, labor and equipment performance, grades and yields achieved and revenues realized, is gathered and organized for computer analysis. Comparisons are made of results obtained by other growers and in other years. Recommendations for future improvement and corrective action are recorded. These may result either in a decision by the handler and grower to again negotiate next year or to part company.

I believe it should be apparent, from this outline of the many-faceted bargaining process, with its dependence upon personal contact between the grower's and processor's representative, that the scheme proposed in H.R. 3535 would uproot the present system to the detriment of both grower and handler.

In place of the present flexible system H.R. 3535 would impose an inflexible coercive one. A processor would no longer be free to negotiate with the individual producer who, in the processor's opinion, would be the most suitable source of supply. The processor would be compelled to bargain instead with *any and all* accredited bargaining associations which designated him as handler. The processor would be under significant pressure, moreover, to *reach agreement* with one accredited association for several reasons. First, to draw out the bargaining process would be to risk being left without a source of supply. Second, to fail to reach an agreement could subject the processor to either charges of failure to bargain in good faith, or compulsory arbitration, either of which prospect significantly undermines any comfort the processor might take in the bill's provision that neither party must agree to a proposal. Third, to fail to agree to an exclusive contract, as any large association might well demand, could lead to the same charges. Fourth, to deal with individual producers outside of an association could subject the processor to allegations of engaging in the unfair practice of offering an inducement to a producer for refusing to join an association. In sum, under the proposed system, the processor could no longer seek the best possible product, from the most efficient or top quality producer, for the best, acceptable price. Instead of choosing his supply, he would have to deal with the "supply" that chooses him, and relinquish to the association the power to designate which crops go to which processors.

Individual producers would be similarly coerced into the mandatory bargaining system. First, the individual producer would no longer be free to seek an efficiency premium or quality differential for his product: The bill prohibits the offering of better terms to anyone than those negotiated with an accredited association, thus preventing the non-member producer from reaping the rewards of superior production. Such a producer's only hope of getting his fair return would lie in joining the bargaining association and trying to raise the general level or prices for the product of all the members. A second source of coercion on the producers derives from the pressure that can be brought on the handler to sign exclusive contracts with the associations. The threat of being squeezed out of the market by exclusive contracts provides not very subtle pressure on all producers to join an association. Third, the legislative scheme may leave non-joining producers subject to even more direct pressures: Contrary to its treatment of handler unfair practices, the bill contains no provisions prohibiting associations from coercing producers to join, or from inducing handlers to breach contracts with non-member producers; moreover, the bill would repeal the existing law—the Agricultural Fair Practices Act of 1967—which does protect individual producers from such coercion.

It should be apparent by now that the necessary effect of the mandatory bargaining system would be artifically to raise prices—that is, raise prices for reasons unrelated to productivity—by providing the accredited associations with monopolistic power over their designated products. As described above, the association's power to delay or prevent a processor from obtaining essential products—through negotiation, mediation, administrative complaints and civil suits—translates into the power to dictate the association's terms to the producer, and such power in turn ensures the association of the ability to compel all competing producers to join. Price increases would be the result.

In addition, the proposed mandatory bargaining system would not permit the bargaining associations to manipulate prices, but would by its very structure increase the costs of production and processing, and therefore the cost of product to the consumer. These costs would flow from the extensive regulatory structure needed to administer the law. The Department of Agriculture would have to establish an agency with at least three principal functions: (1) to manage accreditation proceedings; (2) to conduct mediation and arbitration proceedings; (3) to investigate and adjudicate unfair practice complaints. Further, the agency staff would be involved in bringing and defending civil actions under section 12 of the bill.

The management of each of the three principal functions will inevitably result into complete proceedings.

The mediation and arbitration services proposed are sketched only in bare form in the legislation. Their implementation would undoubtedly also result in extensive, formalized proceedings, with participation insisted upon by all potentially affected parties.

Where the greatest impact of this legislation will be felt—in terms of time and manpower commitment from USDA and cost to all parties—will be in the adjudication of unfair practice complaints. In particular, any dissatisfaction by the parties, any breakdown in the bargaining process, any attempt by processors to do business with independent producers, are certain to lead to charges of refusal to bargain in good faith. Whenever such a charge is made—baseless or otherwise—the Secretary of Agriculture must, without a preliminary investigation, issue an administrative complaint and hold an evidentiary, adversarial hearing. All other charges require an investigation by the Secretary, followed where appropriate by complaint and evidentiary hearing. The adjudicatory process will be slow and complex. The agency will be required in these proceedings to define the offenses of refusal to bargain in good faith, inducement to refuse to join an association, and the other enumerated unfair practices. These offenses are couched in broad and flexible terms, and their refinement through lengthy adjudication would be required before any certainty under the law could be provided.

Increased cost of production and processing, reduced efficiency and artifically increased prices caused by the legislation will combine to cause substantial market dislocation. These results, when added to the elimination of producers' and processors' freedom to deal, compel the conclusion that the experiment is not worth the risk.

Mr. RICHMOND. Now, Mr. Lawrence Taber.

STATEMENT OF LAWRENCE K. TABER, VICE PRESIDENT, CANNERS LEAGUE OF CALIFORNIA

Mr. TABER. Thank you.

Mr. Chairman, my name is Larry Taber. I am vice president of Canners League of California. The Canners League is a nonprofit trade association located here in Sacramento. Its 31 members, about half of which could be classified as small, family owned companies, produce about 85 percent of the canned foods processed in California.

In a typical year, the California canning industry packs well over 200 million cases of canned fruits and vegetables. The factory value of this pack is estimated at over $2½ billion. The industry employs upwards of 60,000 workers during the peak processing season. The average hourly wage of cannery workers is approximately $8 an hour. The annual pack of California canned fruits and vegetables accounts for approximately 35 to 40 percent of the entire U.S. production of these products.

Mr. Chairman, we very much appreciate the opportunity to testify today and to indicate the league's opposition to H.R. 3535. Somewhat along the lines of Mr. Boone's comment, on the way into the hearing this morning, the car in front of me had a bumper sticker that said, "I'd rather be sailing," and that kind of sums up my feelings at the moment, too.

At the outset, it should be made clear that our members support the right of farmers to voluntarily join bargaining associations and to bargain collectively for the sale of their agricultural production.

We believe that the existing State and Federal laws are entirely adequate to protect these rights and we are in agreement with those farming organizations and others who maintain that the current laws do not need changing.

We believe that the proposed act would drastically distort the balanced business relationships between processors and producers in California by establishing unprecedented Governmental intervention in negotiations between them. Our concerns with the bill parallel those presented to this subcommittee last year by the National Food Processors Association. Briefly they are as follows:

It would require compulsory bargaining between processors and producer associations for the sale of their agricultural products.

It replaces the current requirements of the Agricultural Fair Practices Act of 1967, with a totally one-sided set of unfair practices enforced primarily against processors.

It would establish a new regulatory bureaucracy in the Department of Agriculture for Government control of the purchase and sale of all farm crops.

Since these principal concerns were developed in detail in earlier testimony, we will not elaborate on them except to say that they are no less important now than they were last year when brought to the attention of this subcommittee.

A number of grower bargaining associations now flourish in California. They represent growers of tomatoes, cling peaches, freestone peaches, pears, apricots, prunes, raisins and other crops.

Growers may freely choose to belong or not belong to these associations. We have attached information on the principal canning crops in California that are subject to association bargaining. This data includes production and yield for these crops for the past 10 years. It also includes processing plant door prices received by growers and other relevant data.

Our analysis of this data indicates that the existing bargaining units in California have done an effective job with the laws, both Federal and State, that are currently on the books. It is particularly interesting to note the large proportion of each crop that is under the control of a bargaining association. Based on total tonnage, it ranges from 60 to 70 percent in the case of tomatoes, cling peaches, and pears. And over 70 percent for freestone peaches and apricots.

When associations have control over this much of the raw product supply, many processors have no option but to bargain with the respective associations.

Although some California growers have called for tougher State and Federal bargaining laws, we do not believe that an attempt to tilt the balance of power at the bargaining table will really help solve the problems which basically stem from a diminishing per capita consumption and an imbalance in supply and demand.

As members of this committee may know, California canners have recently shut down a number of plants, including one here in Sacramento. Two plants were closed in Modesto, one in San Jose, and one in Oakland. These plant closings reflect the problems that have plagued the processors for the past several years which we have already noted. Namely overproduction, a leveling off of per capita consumption and dramatic increases in prices of energy, waste disposal, tinplate, transportation, labor and, recently and very importantly, interest charges. And everything else that canners use in processing foods.

Interjecting Government into the bargaining process and giving one side virtual monopolistic control in bargaining is not really going to help resolve the industry's problems.

This was pointed out by grower representatives at the hearing on this bill held last year. Those growers also stressed that although it is ostensibly permissive, once the provisions become law, peer pressure and the threat of Government investigation will force all existing bargaining associations to seek accreditation.

There would also likely be a proliferation of bargaining groups into new commodity areas. This would certainly countervene stability in the industry and would subject growers and processors to continuing scrutiny by the Government. In view of the Government's handling of the energy situation and inflation problems, we are at a loss to understand why anyone would encourage more Government intervention in their business. Just happened to throw that in.

We believe there is, in fact, no barrier to effective bargaining for the sale of agricultural commodities at this time. The present laws present a balance between conflicting interests of growers and processors. We here in California have managed to strike a balance. In 1974, when the Tomato Growers Association was initiating its bargaining function, an effort was made in California to introduce legislation much like that contained in H.R. 5353.

There was strong processor resistance, as could be expected, but out of this effort a need was perceived by both sides for some changes in the law governing bargaining associations.

Accordingly, an amendment to the California law was agreed on which added to the list of so-called unfair trade practices, the refusal to bargain for price, terms of sale, compensation for commodities produced under contract and other contract provisions relative to any commodity which a cooperative bargaining association represents. That's right out of the law.

Additional amendments were made which qualified this addition to the type of bargaining association which could utilize it. That is, it required that the bargaining associations have enforceable contracts, adequate financial resources and management, sufficient members to make it an effective agent, and so forth. And then I cite the section of the code.

In our view, this was a major amendment that assures growers that bargaining will take place. In our view, it has facilitated the bargaining process and given growers the kind of access they need to bargain effectively under State and Federal laws.

Mr. Chairman, I appreciate the opportunity and appreciate your forebearance in this summary of my comments.

Mr. Richmond. Thank you, Mr. Taber.

Our next witness is Mr. Adin Hester of the Olive Growers Council.

STATEMENT OF ADIN A. HESTER, MANAGER, OLIVE GROWERS COUNCIL OF CALIFORNIA

Mr. HESTER. Mr. Chairman and members of the committee, my name is Adin Hester. I live at 15072 El Rancho, Visalia, Calif. I am employed by and serve as manager of the Olive Growers Council of California, a newly formed bargaining association of California olive growers.

Moses once said, "Follow me and I will lead you into the land of milk and honey."

Gentlemen, you've arrived at the promised land, made to produce by the toil of farmers who, in turn, have been taken advantage of time and time again, as they present the fruits of their labor to the processors only to receive less than the cost of production.

All the grower asks is to be allowed to negotiate a fair and reasonable return on his investment in land, labor and capital.

I represent what is probably the newest bargaining association in the State. A bargaining association that, like many others, arose out of the response to troubled times when olive growers were selling a crop that barely returned the cost of picking.

But I am ahead of myself.

The olive industry is unique to California where more than 99 percent of the olives are produced in these United States. Arizona is the only other State that has any commercial production and that amounts to less than 100 tons per year.

As an industry, California olive acreage totals some 39,000 acres, which is grown in three regions. Central California or, more precisely, the central San Joaquin Valley, grows 72 percent of the State's olives.

Olives in California are characterized by uneven bearing. One year will see high levels of production as in 1978, when California produced 125,000 tons, immediately followed by a 59,000-ton crop in 1979. Correspondingly, prices paid to growers in 1978, averaged something less than $165 per ton, compared to 1979 prices of $360 per ton. Prices received by olive growers who sold their fruit to independent processors barely returned picking cost. There was nothing left to cover production.

The impossible situation in 1978, became even more ridiculous as time went on. After the processors handled 125,000 tons of olives, which they said could not be done, the co-op growers began to see returns on the 1978 crop average $700 a ton while independents paid something over $160.

This scenario occurred at a time when retail prices were rising and the inventory pipeline was empty. Another classic example of growers being used as pawns in the olive industry. When, from an economic standpoint, justification was there to pay growers a much better price. According to a leading agricultural economist, a price of $600 per ton could have been easily justified.

The average size of an olive farm in California is some 25 acres. Now I am not sure what the definition of a family farm is but, it seems to me, that this would qualify under the current definition.

After the 1978 debacle, over 400 angry, frustrated growers met in Visalia, Calif., to determine what could be done. It was decided to form a bargaining association. Unfortunately it takes a great deal of time and money to form a bargaining group, to write bylaws, articles of incorporation, membership agreements, and to put all of this material into print and initiate a membership drive. As a result, although the council represented in excess of 20 percent of the olive acreage in the State, we failed to gain recognition in 1979, because we did not represent a significant portion of the State's production, whatever that means.

Also the olive industry has a great number of open market price term contracts. Even though there is no pricing formula in these agreements, processors tell us we cannot represent those growers at the bargaining table because the growers are captive. That is certainly true. They are slaves to the industry, committed to producing olives with no assurance that they will have the opportunity of making a profit.

Further, under current law, the grower doesn't even have the assurance that he can sit down with his processor and negotiate a price. It is a "take it or leave it" situation.

Year after year, the olive grower freely gives his pint of blood, but never has the opportunity of getting anything in return. Therefore he finds himself being continually weakened as he struggles to survive.

Therefore, Mr. Chairman, and members of the committee, on behalf of the California olive growers and the Olive Growers Council, we offer you our 110 percent support of your bill, H.R. 3535, for the following reasons:

I was able to bring a few growers with me to this hearing today. I wanted to bring more. But we are headlong into the spring farming activities. But what is more significant, several of the growers I spoke with were reluctant to be seen at this hearing because of what their processors might do to them. There is fear of losing a home for their fruit, fear of getting less than fair treatment during harvest along with several other subtle possibilities. The grower needs legal protection.

Second, we have many growers who fall under what we call an agency agreement. This means the grower is committed to a given processor or handler but there is no provision for price or a formula to determine price in the contract. We need enabling legislation to allow growers of accredited bargaining associations the opportunity to negotiate commodity pricing along with terms and conditions of contracts.

This legislation is not the answer to growers marketing problems. We recognize that it only provides the rules by which growers have an opportunity to better their returns if they so choose.

Third, the bill provides for good faith bargaining on the part of both parties. The bill does not require that agreement be reached but it does establish guidelines for arbitration.

This simply guarantees that meaningful negotiations will occur between the processor and the grower.

Fourth, because of the wide fluctuations in the olive crop size from year to year, this will give the grower an opportunity to negotiate from a pricing program that will average the high and low production cycle, thereby stabilizing prices, from year to year.

Fifth, there will be no dramatic impact on consumers because of improvement in grower prices. What the olive grower receives has little bearing on what the consumer pays. The shelf price is impacted by all of those functions, both processing and marketing that occur beyond the farm gate. For example, in 1979, the grower received approximately $360 per ton of olives. Canning yields average 160 cases per ton on a 24/300 can-per-case, or 9.3 cents per can to the grower.

The consumer is paying on today's market roughly 90 cents per can of ripe olives. That means that olives priced at $360 per ton at the grower level have increased to $3,450 per ton at the consumer level.

If the grower can average $500 per ton, that means an extra 3.7 cents per can which will not impact the consumer. It only means that the grower will get a slightly larger portion of the current profit margin that goes to sources other than the farmer.

Finally, this legislation will protect growers from cruel and unusual discrimination at the hands of processors who dislike bargaining associations and who will do anything in their power to discredit and destroy any such alliance formed by growers.

H.R. 3535 will also protect growers who have current contracts with processors from being canceled because of membership in a bargaining association.

In summary, I submit to you that the success of the family farm in these United States will depend, in large part, on legislation designed, not to provide handouts, but designed to give growers the legal right to form bargaining associations that will represent their best interests as they attempt to be fairly treated and allowed to present their side of the story at the bargaining table.

Thank you.

Mr. RICHMOND. Thank you, Mr. Hester.

Mr. Leslie Melvill.

STATEMENT OF LESLIE DERRICK MELVILL, OLIVE GROWER, CORNING, CALIF.

Mr. MELVILL. Good afternoon, Mr. Chairman, members of the committee.

My name is Leslie Derrick Melvill. I live at Melvill Ranch, Corning, Tehama County, Calif., and am presently engaged in farming about 250 acres of olives, about 120 of which I own and the remainder are under management contracts.

The olives have, until this year, been sold on a forward contract.

I am a member of the California Farm Bureau Federation, presently serving on the board of directors of the Tehama County Farm Bureau. I am past chairman of the State Olive Commodity Committee and am a founder member of what now is called the Olive Grower's Council of California which, as of this date, represents approximately 47 percent of the total industry acreage and whose presence and exisitence is grudgingly being acknowledged by the major packers of the industry.

Since the 1967 crop, my fruit has been delivered to Early California Foods, Inc., whose main offices are in Visalia, Calif. The receiving plant in our area is in Corning, and while originally some 3½ miles from my orchard, it is now approximately 2 miles distant therefrom.

The normal method of contracting sale of our fruit is in the nature of a 5-year commitment. Contract terms are unilaterally in favor of the packer. The grower is the party upon whom the burden of proper growing, mandatory harvesting, and delivery are imposed. In addition, in paragraph 22 of the contract, which I've attached and which you gentlemen have, an automatic lien in favor of the packer exists upon the property in the event of nondelivery of fruit.

Specifications as to quality are absolutely stringent. Provision for arbitration is theoretically made in paragraph 21, but attempts to request a hearing under this paragraph are being denied.

Price is absolutely, totally, and unequivocally at the whim of the packer. And no mechanism for negotiation has been accepatable to the packer who has always operated on a "you must take it" basis. Prices are sent to growers at or after harvesttime and the growers must accept.

Because of their size, Early California Foods, for instance, constitutes 60 percent of the total independent pack, and their unique affiliation with a major insurance investment group, they are in a position to arbitrarily dictate prices in the independent segment of the industry.

Quite apart from the prices and capricious behavior, the measure of their influence is clearly demonstrated by the occurence a few years ago in their refusal to furnish picking lugs, a traditional practice in the industry.

Growers were required to furnish their own. By some magical influence, other independent packers were blessed with the same inspiration at the same identical time. The same thing seems to happen with prices every year.

Prices paid by the major packers in the industry bear no relationship to reality and certainly are a very far cry from the prices at which they sell the fruit.

Attached herewith are the prices paid by Early California Foods since 1965. The absolute dishonesty of their efforts are classically illustrated in the prices paid during the year 1971, and the year 1978.

It can be accepted that any organization whether grower or packer-oriented, can be subject to an error of judgment. However, if intentions are honorable, remedies and restitution can quite easily be made. This has clearly not been the case. In 1971, Early California growers were told that a 110,000-ton crop was expected. And because of that, the average price of canning olives would be approximately $156.

More realistically, because of the size of the fruit, it would be $131 a ton. In fact, canning tonnage that year amounted to some 39,600 tons. A far cry from 110,000 tons that had been predicted. No great carryover existed in the industry. The preceding year's tonnage having been of lesser amount. It was actually 39,200 tons.

No attempt was made by the packers to justify their convenient error in judgment.

In 1978 the industry pipelines were absolutely empty. It is a fact that a record-sized crop was harvested. But because of the extreme shortage that existed, the fruit was easily absorbed. Prices paid by Early California Foods realistically averaged approximately $156 per ton. The harvesting costs alone exceeded the price paid for the fruit. And yet, as always, we were required to deliver the fruit. Sales and prices to the packer on the other hand, were higher than ever before, averaging more than $2,000 a ton. Absolutely no attempt has been made by the packers to make reparations to the growers for what is openly called the rape of the family farmer. Because with the exception of half a dozen investment organizations, that is insurance and oil companies, the remainder of the olive growing of the United States is in the hands of small family farmers.

The profits made by Early California Foods and other independent packers on the 1978 crop are on a percentage basis, infintely more obscene than those made by the oil companies and have enabled Early California Foods to purchase one of the largest wineries of the Nation. Their other expansions into the newspaper industry, rice industry, fire retardents, et cetera, are a direct result of profiteering at the expense of the small family farmer.

Clearly, at the retail level, olives are marketed at a price consistent with other foods. And there has been little or no resistance on the part of the consumer. However, when one compares the prices received by the grower with those received by the packer and further, by the retailer, grower, for instance, gets $156 a ton, the packer gets $2,200, the retailer gets $4,475 a ton. It is easy to see the absolute need for passage of H.R. 3535.

During the 1978 debacle, I initiated grower meetings in northern and central California, the outcome of which was a growers organization, the Olive Growers Council, bent upon securing a fair price for our product.

The packers refused to recognize the existence of the Association. Subsequently requests were made to the packers, certainly to Early California Foods, by the State director of marketing and commitments were received from Early California Foods to meet jointly with us at the office of the State director of marketing.

However, the making of a commitment and its keeping, apparently were not coincidental with their pleasure because Early California Foods not only did not bother to attend the meeting, but lacked the basic courtesy of advising the parties of their intended absence.

All this time they had been paying lipservice to the principle of negotiations. But in fact, nothing was done.

It has only been after the most strenuous efforts by State authorities that Early California Foods, within the last 2 weeks, met in the office of the State director of marketing and most graciously consented to bargain with the council for the coming crop.

Of course such promises in light of their past performance, remain to be tested. Without the provisions of legislation, such as in H.R. 3535, the situation puts me in mind of a Christmas story.

A little boy in a near-destitute olive grower's family wrote to Santa Claus telling him of the need for money to buy food, a few clothes, soles for their worn out shoes, and medication for his father's pain caused by an injury during harvest.

At Visalia a postal worker, seeing the letter addressed to Santa Claus, was about to toss it away. But out of curiosity, he opened it to see just what'd been written to that benevolent old gentleman. His heart was touched by what he read.

The boy had asked for $100, and told him why. All the mailman had in his pocket was $5 which he slipped into an envelope, addressed it to the boy, and mailed it.

A few days later a neighbor asked the boy if he believed in Santa Claus. "Oh, yes," said the boy. "I wrote him and asked for $100."

"And did you get it," he said to the boy.

"Of course, but don't ever let your mail go through Visalia."

"Well, why not," said the man.

"Because," said the boy, "some thief stole $95 of my $100 and it might happen to you."

Well, Mr. Chairman, that's what happens to the consumer's dollar. The olive farmer is fortunate if he gets 5 cents. They've been listening to that Bryl-Creme ad too long. They think a "little dab will do us." But it won't.

Terms of H.R. 3535 will provide a valuable service to the farmer whose costs, like any other enterprise, have risen astronomically but whose returns have actually decreased, not only in net terms or by percentage manipulation, but in actual price per ton.

It will protect the consumer by leveling off the peaks and valleys characteristic of an alternate bearing crop such as olives.

What more classical demonstration of fraud exists than prices paid to olive growers for their limited size fruit.

Over the last 3 years it has averaged approximately $48 a ton, the excuse being that the product was not really saleable. In fact chopped olives have sold at an average of the bottom line, of which is $2,200 a ton. And that is sold to the retailer. He charges twice that amount.

With such an enormous price spread, even if the growers were to successfully triple prices paid them by packer, it would not affect the retail cost.

Bearing in mind that to err is human with proper bargaining, the gamble can be eliminated and the consumer further protected because terms other than price could be included in an equitably negotiated contract that would have no major upward impact in consumer prices but a major impact on returns to the grower.

The State of Michigan a couple of years ago, despite the wails, protests, and horrendous cries of agony on the part of packer, enacted legislation similar in impact to H.R. 3535. It was originally done on a 2-year trial basis.

The prophets of doom and gloom were proved so completely wrong by the outstanding success of the measure that the time limit has now been removed, and it is a permanent feature of farming in Michigan.

In September of 1978, I represented the small farmers of California at a special conference sponsored by the U.S. Department of Agriculture attended by farming representatives from every State and an enormous contingent from various governmental departments. The major recommendation of that conference related to the need for marketing legislation exactly in accordance with H.R. 3535.

Most certainly the Olive Growers Council of California will file for accreditation under the provisions of the bill which will go a long way toward remedying the inequities which presently exist and really allow the forces of free enterprise to function, rather than the forces of monopoly to dictate and make of growers price-takers instead of participants in free enterprise.

The consolidation of packers from 53 of a few years ago to four major packers and three marginal enterprises virtually mandates that some provision be made to prevent abuse of existing circumstances which, after all, must be objectionable to right-thinking people.

Most importantly, it will benefit the consumer by insuring a steady supply of high quality olive products at a reasonable price and prevent price gouging engineered by the major packers at the expense of the small family farmer who also is a consumer.

An addition should be made to the bill requiring the grower co-ops to meet the base price paid by independent packers. This again would insure efficient functioning and further advantage to the consumer.

I thank you for the opportunity to express the views of small farmers whom I represent in various capacities and I close with the hope that the voice of the people will be heard and the passage of H.R. 3535 will be expeditious.

Mr. RICHMOND. Thank you, Mr. Melvill.

Mr. Panetta.

Mr. PANETTA. Thank you, Mr. Chairman.

Thanks to all of you for your testimony that's been presented. I really found that the quality of testimony, regardless of the side you take on this legislation, had really been outstanding. I think that each of you have addressed the issues that impact on each of your areas.

Mr. Boone, you stated at the beginning that there is no record of abuse in the procurement process and, yet, you've been sitting here most of the day as we have, and listening to the testimony that's been presented on the other side in terms of the concerns that have been raised by whether it's olive growers or tomato growers or what have you.

I'm just wondering if you don't feel that the testimony and evidence that they have presented indicates some problems in these areas.

Mr. BOONE. You're speaking in the broad sense and I was speaking in the narrow sense. I was coming from the direction of a grower of products that go into the freezing industry. And speaking from the freezing industry. And I think that we are, in our industry, remarkably free from this sort of thing.

Mr. PANETTA. If that is the case, do you think that H.R. 3535 would impact on that? You've got a very highly competitive frozen food industry. It probably would continue to be highly competitive, based on prices paid to producers. There probably wouldn't be any need for people to get together in a bargaining association, would there, whether H.R. 3535 were there or not?

Mr. BOONE. It's possible that the thing would apply over here and not over there. It's always dangerous, however, to have a loaded gun in the house. That is one of the reasons that I feel that there are other avenues and I enumerated them in my remarks.

If we can get a stable dollar so that we can go into the export trade to a greater degree and have some assurance that we know what we're doing. We're not I.T. & T. and we don't have 14 people in the money-changing department just to keep track of whether something is worth so much today or something else tomorrow or a Deutsch mark or a franc.

We need some basic things like getting our taxes down, getting some of the regulations off our backs, getting the dollar stabilized, getting this inflation under control. Some of those kinds of things, I think, will do us, and I'm speaking about the frozen food industry, more good than we can derive from this sort of thing here.

Mr. **PANETTA**. I don't disagree with you but I'm a little concerned about the time frame to achieve what you've listed has to be done, vis a vis the kind of day-to-day problems that are being faced right now. I don't disagree with you. I don't think anybody else does. It's a broader step that has to be taken.

But it's not likely we're going to be stabilizing the dollar or balancing our trade imbalance within a very short period of time, considering the economic problems that we have.

A concern that I think we have to address is what happens in that interim period. And that's a very real problem. I am not sure, again, of what the answers are. But it's clear that we can't just ignore a situation that's taking place.

Mr. Taber, I want to thank you for taking the time to come here and also testify. You indicated in your testimony that there was an amendment made to the California law which dealt with refusal to bargain for price, terms of sale, compensation, commodities, et cetera. Would you accept a similar amendment at the Federal level?

Mr. **TABER**. I have to speak just for the California canners but I would say they would because this was a policy that was agreed on after a great deal of gnashing of teeth and soul searching and everything else, but it was a perceived need and it seems to have helped in some areas that were highlighted in a hearing very much like this one. So I really can't speak for the national but I would guess they would go along with it.

Mr. **PANETTA**. I understand that.

Mr. **TABER**. But I would guess they would go along with it because it seems to have been mutually helpful.

Mr. **PANETTA**. Thank you. Thank you all.

Mr. **RICHMOND**. Thank you, Mr. Panetta.

Mr. Glickman.

Mr. **GLICKMAN**. Thank you, Mr. Chairman.

First of all, I would like to say to you and to Mr. Panetta how much I've enjoyed being at the hearing today, becoming familiar with the subject which is not quite as acute in my area as it is here because the concept hasn't been applied as much to the grain farmers as it has in this part of the country.

But, obviously, all family farmers are suffering severe economic consequences with low prices and high interest rates. I think it's worthwhile to explore all of these ideas, regardless of what final solution we come to.

Mr. Melvill, I've heard your story before about the little boy. The way I heard it was he sent a letter to God and said, "Dear God, I need a bicycle for Christmas. And would you please send me $100."

And when the postman got it, he didn't know where to send it so he sent it on to Washington and delivered it to the White House and the President got it.

And he opened it up and he decided, "Well," and he didn't want the kid to be disappointed so he put a $5 bill in the envelope, sent it back to the kid.

And the kid got the $5 bill, was appreciative, and he sent the letter back to God. He said, "Thank you, God, for the $5 but, please, the next time don't send it through Washington. They took 95 percent." [Laughter.]

But I suppose the implication is the same in both stories.

Mr. Hester you seemed to imply that there was some intimidation. I wonder if you might elaborate on that a little bit.

Mr. HESTER. There are certain growers who have relationships with their processors and, of course, in the time frame of having some place to take your olives when you harvest them, they are a little bit concerned about the possibility of being identified with a strong bargaining association. There are some comments and suggestions made to growers with respect to their long-term relationships if they do get involved in these kinds of associations.

Mr. GLICKMAN. Is this a serious problem, modest problem? How would you categorize it?

Mr. HESTER. I think it's, perhaps, more serious than many of us realize.

Mr. GLICKMAN. I have no further questions. We will review the testimony quite carefully and work under Mr. Panetta's leadership to see whether any legislation, if any, needs to be enacted.

But I do appreciate being here.

Mr. RICHMOND. Thank you, Mr. Glickman.

Mr. Nolan.

Mr. NOLAN. No questions.

Mr. RICHMOND. Thank you, panel. We certainly appreciate your spending the entire day with us and find your testimony very useful.

We have three more witnesses, Mr. Fred Lourence who is appearing for Mr. Bellino, Mr. Elmer Smith, and Mr. Roger Marshburn.

Mr. Lourence.

STATEMENT OF FREDERICK A. LOURENCE, FARMER, NORTHERN SACRAMENTO VALLEY

Mr. LOURENCE. Mr. Chairman, members of the subcommittee, I feel it is a privilege to appear here today to speak in support of H.R. 3535. I thank you all. I farm 40 acres of prunes in the northern Sacramento Valley. In addition, my brother and I have a 60-head cow-calf operation. I also manage a walnut-alfalfa farm for an adjoining neighbor that encompasses 150 acres.

In my own agricultural business, I have had little to do with any bargaining associations. My prunes are handled by Diamond/Sunsweet, a grower-owned cooperative. However, having served on a number of action committees dealing with various farm commodities in Tehama County over the past 8 years, I have become familiar with the serious bargaining problems of producers that exist. In my role as president of the Tehama County Farm Bureau, examples of arbitrary discrimination by processors were often conveyed to me.

One noticeable trend that I have observed over the years has been the diminishing number of processing companies in the food manufacturing industry. Food processors, of all kinds, such as meat, fruits, vegetables and nuts are dwindling in number.

The producers of the raw farm commodities are left with fewer and fewer outlets in which to sell their crops. Being a firm supporter of the free market system, the free enterprise system, I believe this is an unhealthy trend and situation.

The question, then, is when does the system deteriorate to the point of the oligopolies where we no longer have a free market system in agriculture? Without open bidding by a reasonable number of buyers, a fair market price is difficult, if not impossible, to establish. When the buyers get down to so few, coersion, blackmail and any other technique bordering on criminal practices can dictate the terms of the contracts.

An example that I am most familiar with in the recent past is the walnut industry. The 1978 crop was bid up to an astronomical level for no apparent reason. It was not a particularly short crop that year. Growers naturally did not complain and felt it was about time that they received a fair price that accurately reflected growing costs.

The retail price immediately felt the sharp price hike. The 1979 crop was a different story completely.

The handlers who were so generous the year before only offered about one-half the previous year's price for the walnuts.

Meanwhile, the rains struck in the north end of the Sacramento Valley where a good part of the crops are produced. And during the harvest, the mold set in on the walnuts and offered even a more reason for a cheaper walnut price. Mold could be found rampant, in most of the nuts that are delivered in that area. And it was just a matter of looking closely at the walnuts and, believe me, the buyers looked very closely. Not only were growers the losers, but so were the retail consumers. Because unfortunately, retail prices seldom follow the raw product prices back down.

With a 30-cent-per-pound price reduction in the walnuts to the grower in the 1979 crop, there was only about a 5-cent-a-pound reduction to the supermarket.

The same situation is apparent to me in the prune industry. We had a sharp price increase this last year. Now there is a prospect for a very light crop coming on and I'm sure the same thing, my own feeling, will happen to the prune industry.

The result will be a rash of the prune tree orders to the nurseries being reduced or canceled and bulldozers will start pushing out prune orchards to make way for subdivisions.

I have been following the National Agriculture Bargaining Act since its inception. Initially it was Congressman Ammerman's bill, H.R. 13869. I strongly feel that this legislation will offer solutions to the type of situations that I have just described.

H.R. 3535 will add stability to both acreage and production. It will legitimize bargaining associations that are already organized and trying to function. It will stabilize large production oscillations that help neither grower nor consumer.

This bill will inject fair competition into contract negotiations and the end result will be a more stable supply and price for consumers in the marketplace.

The greatest agricultural producing nation in the world needs H.R. 3535.

Thank you for this opportunity to express my views on this important legislation.

Mr. RICHMOND. Thank you, Mr. Lourence.

Mr. Elmer Smith is next.

STATEMENT OF ELMER L. SMITH, OLIVE AND CITRUS GROWER, VISALIA, CALIF.

Mr. SMITH. Gentlemen, my name is Elmer L. Smith. I reside at 16500 Avenue 325, Visalia, Calif. I have been farming 50 acres of olives and citrus in the Ivanhoe area for 23 years. Currently I serve on the Tulare County Farm Bureau Board of Directors as the Olive Commodity chairman, the California Farm Bureau Olive Adivsory Committee and I am a board member of the California Olive Growers Council.

Ours is a family farm with outside help only at harvest and pruning time. We dealt with independent processors for over 21 years. Four years ago, myself and four other growers brought charges against our processor through the California Bureau of Market Enforcement, for not abiding by the terms of our contract. Prior to the hearing, our processor settled our claim but cancelled all their existing contracts for fear of other claims. Feeling that the new contract removed all my chances for redress in future years, I have joined a co-op processing and marketing group.

The 1978 olive crop year was a disaster for the independent growers. The price paid by independent processors barely covered harvest cost, hence some orchards were not picked. This left no income to cover their cultural costs. However, the annual stockholders report by the major independent processor revealed excessively high profits in relation to growers returns.

As the Farm Bureau Olive Chairman, I was asked to help form an olive bargaining association. This was done in time to bargain for the 1979 olive crop. However, the independent processors refused to bargain with us.

The Olive Growers Council represents 40 percent of the olive acreage and expects to have in excess of 50 percent membership by the 1980 harvest. By all indications we will be facing another large crop, as we did in 1978.

We are in dire need of some means of having good faith bargaining with the independent processors and feel H.R. 3535 will solve the problem. As a co-op grower, I feel a strong bargaining body will stabilize the olive industry.

Thank you.

Mr. RICHMOND. Thank you, Mr. Smith.

Our last witness is Mr. Roger Marshburn.

STATEMENT OF ROGER MARSHBURN, FARMER, VISALIA, CALIF.

Mr. MARSHBURN. Thank you, Mr. Chairman.

My name is Roger Marshburn and I would like to be excused from reading this statement and have it entered into the record.

Mr. RICHMOND. Without objection, so ordered.

Mr. MARSHBURN. Mr. Melvill and Mr. Smith said it all for me and I would like to say that this legislation is contrary to my political philosophy but as an olive grower with my back up against the wall, I'm ready to rise above philosophy. I believe that we need help.

Mr. RICHMOND. Thank you, Mr. Marshburn.

Mr. PANETTA. There is not much I can add to that. Thank you.

[The prepared statement of Mr. Marshburn follows:]

PREPARED STATEMENT OF ROGER MARSHBURN, FARMER, VISALIA, CALIF.

Mr. Chairman, gentlemen, my name is Roger Marshburn. I am an olive grower and live at 34101 Road 156, Visalia, California 93277. I grow 60 acres of olives that are sold to independent olive processors. Those processors in the past have been Early California Foods and Bell Carter Olive Company. I do not like government regulation. I do not like Federal support programs. I believe in the free enterprise system and the law of supply and demand.

However, I am here today to voice my support of H.R. 3535, the National Agricultural Bargaining Act that is being presented by Mr. Panetta. I am tired of being ripped off and having to give my olives to the independent processors. I am in business to make money just like the canners. The only problem is the canners make money and the grower pays for their operations. They don't care about my welfare.

In 1978, I received the cost of picking when I delivered my olives. After the season closed and Early Calif. Foods saw how much money they made off the growers, they bought a winery, built a new rice plant, and probably doing some other things I do not know about.

Look at their annual report and you can see how much profit they made from their olive operations. I am tired of being robbed by the processor.

It is time we had legislation that will protect the family farm operator and require that the canners negotiate prices with the farmers. Now all they do is look at the crop size and tell me how little I will be paid for my olives. I cannot stay in business as a price taker. I need help to make my canner understand my problem and to make him negotiate with my bargaining association whom I have authorized to bargain for me.

I need H.R. 3535 to protect my rights as a small farmer, as a taxpaying citizen, and as a consumer.

Thank you.

Mr. RICHMOND. Mr. Nolan.

Mr. NOLAN. Just one quick question.

We've heard a lot about consolidation of the processing industry in this area. Is there much of that taking place among the farming operations in the area, farms increasingly being consolidated and bought up by larger corporations?

Mr. LOURENCE. The farms are definitely getting larger in the State. I think in the last 10 years, it would average 100 acres greater in acreage, which is mostly to get a bigger economical unit so that they can use more machinery and less labor-intensive. That's the main reason, as I see it.

Mr. NOLAN. No further questions.

Mr. RICHMOND. Thank you, Mr. Nolan.

Mr. Glickman.

Mr. GLICKMAN. I must again want to reiterate what I think is the significance of the testimony that we've received here from both sides. I am sure we'll have opportunity, Mr. Chairman, in the future to hear more about this legislation.

Mr. RICHMOND. We certainly will, Mr. Glickman.

I want to thank every single person in this room for coming. Mr. Panetta's legislation is certainly a worthwhile piece of legislation.

We plan to continue hearings in Washington, so that we can hear from farmers and farm organizations from other parts of the country.

It certainly is an important issue and I intend to work very closely with Mr. Panetta to try to solve the problems we have heard so honestly and sincerely expressed today.

Mr. PANETTA. Mr. Chairman.

Mr. RICHMOND. Mr. Panetta.

Mr. PANETTA. If I might, I just received a telegram from Mr. Thomson, who was scheduled to testify in the first group. I just want to submit this for the record.

[The telegram referred to follows:]

[Telegram]

BAKERSFIELD, CALIF., *April 18, 1980.*

Congressman LEON PANETTA,
Care Department of Food and Agriculture, DLR,
Sacramento, Calif.

DEAR CONGRESSMAN PANETTA: Due to unforeseen circumstances, am unable to be at your hearing as originally planned. Thank you for your courtesy and for the opportunity to speak to the issue of the Agricultural Bargaining Act. Will submit written comments.

Sincerely,

C. JEFF THOMSON.

Mr. RICHMOND. We will keep the record of this hearing open for the next 2 weeks for anyone else who wasn't able to be heard this morning or this afternoon. Anyone else who would like to have his statement included in the record, can send a statement to the House Committee on Agriculture in Washington, and we will see that it's part of the committee report.

Mr. Nolan.

Mr. NOLAN. Mr. Chairman, I just wanted to take this opportunity to commend you for calling this hearing and to commend Mr. Panetta for sponsoring this legislation. And stimulating the kind of discussion here about what is, obviously, a very, very serious problem.

Mr. RICHMOND. I commend you and Mr. Glickman for coming out with us. We really appreciate that.

Mr. PANETTA. I would like to add my thanks to all of you for the time it takes. It's not easy. It's easy for me because this is my home State, it's near my district and it's on the way to Monterey, Carmel and so there is no problem.

But for these fellows to leave from back East and be able to come out here, attend these hearings, and hearings in Los Angeles on Monday, it's a difficult chore. So I want to thank all of them and thank all of you. California is a nice place to visit.

Mr. GLICKMAN. Would my colleague yield for a minute? If you'd spent all your life in Kansas, you would know that just seeing water and mountains and trees is a nice experience. That's one of the reasons I enjoy coming out here.

Mr. Panetta. I would also like to thank all of you who were here and listened to the testimony, and also those testifying.

Mr. Richmond. The hearing is adjourned.

[Whereupon, at 2:15 p.m., the hearing was adjourned.]

[The following material was submitted to the subcommittee:]

pgi
POTATO GROWERS OF IDAHO
Producers of World Famous Potatoes

GERALD L. MURPHY
General Manager

July 24, 1979

The Honorable Frederick Richmond, Chairman
Subcommittee on Domestic Marketing,
Consumer Affairs and Nutrition
House Agriculture Committee
United States Congress
Room 1707 Longworth House Office Bldg.
Washington, D. C. 20515

JUL 27 A.M.

RE: Agricultural Bargaining Act

Dear Congressman Richmond:

This is to confirm our expression of willingness to appear before your subcommittee to testify on behalf of HR 3535 should a field hearing be scheduled in California or another western state.

We had requested the opportunity to testify on July 9 or 10 in Washington, D. C., and could not be accommodated because the number of requests exceeded the time available to schedule testimony.

I believe that other producers and groups would also participate if this opportunity were present and hope you are able to arrange such a hearing.

Sincerely,

Gerald L. Murphy

GLM:ja

PHONE 208/785-1110
STATE OFFICE — P.O. BOX 949 — BLACKFOOT, ID 83221 — ~~PHONE 208/785-2669~~

[illegible] MT. DIABLO BLVD. [illegible]
LAFAYETTE CA [illegible]

Californi[illegible]nning Peach Association

August 1, 1979

The Honorable Frederick W. Richmond
Chairman, Subcommittee on Domestic Marketing,
  Consumer Relations and Nutrition
Committee on Agriculture
U.S. House of Representatives
Washington, D.C. 20515

AUG [illegible] 1M

Re: HR-3535

Dear Congressman Richmond:

I regret that the start of our harvest season for cling peaches in California coincided with the dates of your Subcommittee's hearings on HR-3535 (National Agricultural Bargaining Act) and I was therefore unable to attend.

I want very much, however, to convey to the Committee our organization's strong support of HR-3535 as a reasonable means of insuring a justifiable return for America's farmers.

HR-3535 will protect and guarantee to a farmer his right to join with other farmers and collectively bargain for the price he will receive for his crop.

We are very hopeful that field hearings will be held on HR-3535, which will have an impact on most of the nation's farmers. Field hearings would enable those of us on the West Coast to enter into the hearing record our experiences with farm bargaining and set forth our case on the need for passage of HR-3535.

We strongly urge your Committee to consider holding field hearings in the near future on this important issue.

Sincerely yours,

Ronald A. Schuler
Ronald A. Schuler
President

smc

cc: The Honorable Leon E. Panetta

ROUTE 1, BOX 420
COALINGA, CALIFORNIA 93210
(209) 884-2477

HARRIS FARMS, INC.

DIVERSIFIED FARMING
CATTLE - HORSES

August 2, 1979

The Honorable Frederick W. Richmond
Chairman, Subcommittee on Domestic Marketing,
Consumer Relations, and Nutrition of the
Committee on Agriculture
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Richmond:

We are very interested in H. R. 3535, which deals with agricultural bargaining. I think you should have field hearings on this bill, so that farmers and bargaining groups which were unable to go to Washington for the July hearings will have an opportunity to testify.

There are a great many examples in California of why this legislation is needed. I hope you will consider field hearings.

Sincerely,

John C. Harris

JCH/scn

SENATE
LANSING, MICHIGAN 48909
517-373-1801

STEPHEN V. MONSMA
THIRTY-SECOND DISTRICT

COMMITTEES ON:
APPROPRIATIONS, MEMBER
SUBCOMMITTEE ON SOCIAL SERVICES, CHAIRMAN
ENVIRONMENTAL AFFAIRS, MEMBER

March 24, 1980

Congressman Fred Richmond
United States Congress
Washington, D. C. 20510

Dear Sir:

I am writing to urge you to take up House Resolution 3535, the National Bargaining Legislation.

As a member of the Michigan Senate's Environmental and Agricultural Affairs Committee, I believe this legislation has the potential of helping Michigan's farmers.

At the very least, I feel representatives of the agricultural community should be given an opportunity to express their support for this legislation. Please take it up in the near future.

With very best wishes.

Cordially yours,

Steve Monsma

Stephen V. Monsma
State Senator
32nd District

SVM/kp

cc: Ms. Sharon Steffens
6690 Walker, N. W.
Grand Rapids, MI 49504

April 7, 1980

Mr. John Crapa
Committee on Agriculture
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Crapa:

This is to advise you of my support of H. R. 3535, the National Agricultural Bargaining Act. I will be unable to attend the field hearing to be held in Sacramento, California on April 18th. Thus, I will take this opportunity to indicate my support.

I am a pear grower in Sacramento County and serve on the Board of Directors of the California Canning Pear Association. This Association is a bargaining cooperative responsible for establishing a price for the state's crop of Bartlett pears for processing, and for the terms and conditions of their sale.

This Association has been in existence over twenty-seven years and is recognized and understood by the processors with whom we deal.

Our Association is in favor of H. R. 3535. We feel that it will be of special use to bargaining Associations that are just beginning, or are younger and less well established than our own.

Sincerely yours,

Charles McDowell

Charles McDowell

Western Washington Farm Crops Association

1354 Old Highway 99
Peter T. Sword, Manager • Phone 424-7164

April 14, 1980

APR 24 A.M.

Representative Fred Richmond
Chairman Domestic Marketing,
Sub. Committee
1301 Longworth H.O.B.
Washington D.C. 20515

Dear Representative Richmond,

We as the Bargaining Association for the sale of peas, corn, carrots, cauliflower and cucumbers, in Western Washington would like to support your efforts in passage of a National Agricultural Bargaining Act. We as an Association have been successful at marketing our products over the years and do not entirely agree with the wording of HB 3535 as presented to congress in 1979. We are cautious in the area of arbitration, as the market place should be the true arbitrator.

We would certainly like to see unfair trade practices eliminated under the law, as the existing laws are not giving us adequate protection. Should this protection be granted under the act many of the real problems in Marketing of Agricultural Products will be overcome.

We certainly would be agreeable in supporting your efforts along those basic lines and would welcome any questions you may have so as to aid your efforts in this area.

Yours Truly,

Roger Nelson,
President

cc: Representative Tom Foley

RN:kw

CALIFORNIA FREESTONE PEACH ASSOCIATION

P. O. BOX 3004. MODESTO. CALIFORNIA 95353
PHONE MODESTO AREA CODE 209. 524-6231
422 FIFTEENTH STREET. MODESTO. CALIFORNIA

April 28, 1980

House Agriculture Committee
Subcommittee on Domestic Marketing, Consumer
Information and Nutrition

Mr. Chairman and Members of the Subcommittee:

I am John Starn, Manager of the California Freestone Peach Association, 422 15th Street, Modesto, California, 95354.

This letter is a statement of support of H.R. 3535 by the California Freestone Peach Association.

The Association is a bargaining cooperative formed in 1953. It is recognized as the bargaining agent for growers who produce about 50% of the tonnage used for processing freestone peaches in California.

The Association supports this Bill because it has had problems with processors who:

(1) Have failed to recognize the Association,

(2) Circumvented the Association by offering Term Contracts to members if they would withdraw their membership, or

(3) Refused to negotiate in good faith.

This Bill contains the framework to build a proper foundation in which both sides can bargain in good faith with neither side gaining an unfair advantage.

I feel that testimony given at your recent field hearing was evidence enough that this Legislation is needed and urge your support.

Sincerely,

John R Starn

John R. Starn,
Manager

JRS:aw

WYOMING FARM BUREAU

April 2, 1980

The Honorable Leon Panetta
United States Representative
431 Cannon House Office Building
Washington, D. C. 20515

Dear Congressman Panetta:

The Wyoming Farm Bureau is a federation of all 23 counties in our state. Farm Bureau members in Wyoming produce every type of agricultural commodity grown in this state. Our members favor a market-oriented agriculture, which is the most efficient means of producing food and fiber and provides farmers and ranchers with the greatest opportunity for economic well-being. This means that farmers and ranchers must be granted the freedom to produce for a profit. A market-oriented agriculture policy, effectively implemented, can assist, in part, toward achieving that goal. However, in some instances, an additional tool is needed to maximize the opportunity to increase agricultural income.

The additional tool I refer to is federal marketing and bargaining legislation of which you're a chief proponent. Please have this letter of support placed in the record regarding H.R. 3535 (The National Agricultural Bargaining Act of 1979), on which a public hearing will be conducted April 18 in Sacramento, California.

We urge that enactment of a comprehensive federal marketing and bargaining act, H.R. 3535, be given a high priority by Congress. Such a law should be available to producers in all states if they desire to organize marketing associations and operate within the provisions of the act.

We in Wyoming strongly endorse our national affiliate's (American Farm Bureau Federation) backing of this legislation. Farmers and ranchers in Wyoming have a stake in this legislation which is drafted to provide agricultural producers with another law which may be used (if desired) to help improve their net income. Farmers in Wyoming can envision how such a National Agricultural Bargaining Act may be useful in malting barley negotiations at some future time, providing the measure becomes law. There's solid evidence that this proposed law is adaptable to many commodities. While other states with more specialty crops might initially benefit more than Wyoming farmers and ranchers from H.R. 3535, it has the potential to become an effective income-increasing mechanism for our members.

Thank you for the opportunity to express the support of H.R. 3535 from Farm Bureau members in Wyoming and for having our comments made a part of the hearing record.

Sincerely,

David A. Flitner

David A. Flitner, President

cc: Rep. Cheney, Glasson, Dave Christensen, Board of Directors, Farm Bureau Presidents of Big Horn, Fremont, Park and Washakie Counties

DAF/je

P.O. Box 1348 Laramie, Wyoming 82070 Phone (307) 745-4835

Arthur Filice
261 Olive Avenue
Patterson, CA 95363
(209) 892-8245

April 7, 1980

Mr. Joe Crepa, Staff Consultant
House Committee on Agriculture
1301 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Crepa:

My name is Arthur Filice and I operate 143 acres of apricots in Patterson, California. I harvest approximately 1,200 tons of apricots annually. I am a member of Apricot Producers of California, a bargaining association and I am also a member of the Farm Bureau.

I am submitting this statement in support of the National Agricultural Bargaining Act, H.R. 3535, by Rep. Leon Panetta. My personal experience in the past has made it apparent to me that a stronger bargaining code is needed.

My experience was a couple of years ago when a handler failed to negotiate with the apricot association. I was contracted to deliver to this handler with the understanding that they would pay a "reasonable price" for the fruit they received. Upon delivering the truck loads of fruit I was not given accurate grading and weight receipts nor were any of the loads graded in my presence.

The negotiated price was accepted by 51 handlers, yet this handler did not want to accept the negotiated price and paid the growers what they felt was a reasonable price. Needless to say, their price was well below that which was negotiated.

After much correspondence from the assodiation's attorney, the handler agreed to pay the number one price. When I received the balance due me, I noticed I was deducted for cullage for which I had no documents in order to justify this. Along with the association, I filed a complaint with the Bureau of Marketing in order to rectify the matter.

After the meeting with the Bureau of Marketing, the handler agreed to adjust my payment. I received the payment in April and my fruit was delivered in July.

During the season, while differences were abundant between the handler and the association, I was denied a home for 20 tons of apricots. This was a complete loss that could have been prevented if the handler was obligated to "Bargain in Good Faith". I was partially compensated for the fruit loss by the association.

I feel that this whole matter could have been bypassed if we had a stronger bargaining code that delineated the rules for negotiating, as does H.R. 3535. By requiring good faith bargaining and eliminating unfair trade practices, H.R. 3535 would offer the family farmer a sense of security that something is being done to protect him.

I firmly support the National Agricultural Bargaining Act and I urge you to also support it.

Sincerely,

Arthur Filice

Arthur Filice

Roy Schmidt
1737 Beverly Drive
Modesto, CA 95351
(209) 522-9243

April 8, 1980

Mr. Joe Crepa, Staff Consultant
House Committee on Agriculture
1301 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Crepa:

My name is Roy Schmidt and I own 114 acres of apricots in Westley, California. I harvest approximately 1,300 tons of apricots annually.

I am a member of Apricot Producers of California, a bargaining association and I am also a member of the Farm Bureau.

I am submitting this statement in support of the National Agricultural Bargaining Act, H.R. 3535, by Rep. Leon Panetta. My personal experience in the past has made it apparent to me that a stronger bargaining code is needed.

A couple of years ago, my harvest operation and returns for goods delivered was altered due to the unwillingness of the handler to honor the terms negotiated by the association. The handler failed to pay for apricots at the time and in the manner which was specified in the contract and also failed to give me accurate grading and weight receipts upon each and every delivery. I had delivered fourteen truck loads of apricots and only one of these was informally inspected.

The problem began when the handler refused to accept the negotiated price for number one apricots (this price was already accepted by 51 handlers). The handler insisted on paying me on an "orchard run" basis; i.e., paying me a lower price per ton for my fruit and not deducting cullage from my payment. This had never been in the terms negotiated and was definitely not acceptable to me.

After much correspondence between the handler and the association, the handler agreed to pay the negotiated number one price, less deductions for cullage. Upon receiving this payment I noticed that my deductions were excessively high and since I had not received grade tags, there was no justification for the deductions.

Mr. Joe Crepa
April 8, 1980
Page 2

It was apparent to me that the handler was not recognizing the association as a bargaining unit. Since another association member was experiencing the same difficulties, it was decided to report the matter to the Bureau of Marketing.

At the meeting held with the Bureau of Marketing, the handler agreed to pay the balance due me. This was nine (9) months after I had delivered the fruit.

The National Agricultural Bargaining Act could have prevented the above matter from happening. I feel that the section in the Act entitled "Bargaining in Good Faith" is much needed in order to expedite negotiations. With today's interest rates, if I had to wait nine months before I received payment for my fruit my operation would be seriously jeopardized.

With these uncertain economic times, the livelyhood of a farmer is not very stable. This legislation would at least offer some security by requiring good faith bargaining and eliminating unfair trade practices.

We, the American Farmer, need this legislation in order to remain productive in agriculture. I urgently request that you support H.R. 3535. We need this legislation if the family farm is to survive and if our agriculture is to remain the most productive in the world.

Sincerely,

Roy Schmidt

Don Sequeira
22537 Kilburn Rd.
Crows Landing, CA 95313
(209) 837-4206

April 8, 1980

Mr. Joe Crepa, Staff Consultant
House Committee on Agriculture
1301 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Crepa:

My name is Don Sequeira and I own 75 acres of apricots in Crows Landing, California. I harvest approximately 600 tons of apricots annually. I am a member of Apricot Producers of California, a bargaining association, and I am also a member of the Farm Bureau.

I am submitting this statement in support of the National Agricultural Bargaining Act, H.R. 3535, by Rep. Leon Panetta. My experience in the past has made it clear to me that protection for farmers is vitally needed in order to protect their welfare.

My experience was a few years ago when a handler led me down the "primrose path" only to leave me without a home for my fruit in the end.

I was contacted by this handler well before the apricot harvest began. I was told that if I sold my fruit to them, they would sign me up on a five year contract. This would guarantee me a home for my fruit.

I had been delivering to another handler on a yearly basis, but with no guarantee that they would take my fruit every year.

I was wined and dined by this new handler, encouraging me to send my fruit their way. Their terms appeared favorable so I decided I would accept their offer. They said they would be sending me a contract to sign. I told my old handler of my arrangements; i.e., that I would be selling my fruit to another handler.

The harvest season drew nearer and I had not as yet received the promised contract. I phoned the handler and they said that they decided not to take my fruit. By this time my previous handler had all the fruit he wanted so I was left without a home for my fruit. As late as it was, I frantically searched for a home for my 600 tons of apricots. Luckily I found one.

The fact that I did not lose my crop does not alter the fact that I was mislead by this handler, with no recourse available to me. How can a small farmer fight a large corporation?

The actions of this handler were clearly "unfair practices" on their part. If we had a stronger bargaining code this sort of action could be eliminated. If I would have lost all my fruit, I would have suffered substantial economic hardship.

I strongly support the passage of H.R. 3535, the National Agricultural Bargaining Act. I urge you to do so also.

Sincerely,

Don Sequeira

Don Sequeira

Dean R. Houk
11018 Cox Road
Patterson, CA 95363
(209) 892-8818

April 9, 1980

Mr. Joe Crepa, Staff Consultant
House Committee on Agriculture
1301 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Crepa:

My name is Dean R. Houk and I own 87 acres of apricots in Patterson, California. I harvest approximately 915 tons of apricots annually.

I am a member of Apricot Producers of California, a bargaining association, and I am also a member of the Farm Bureau.

I am submitting this statement in support of the National Agricultural Bargaining Act, H.R. 3535, by Rep. Leon Panetta. My personal experience in the past has made it apparent to me that a stronger bargaining code is needed.

Not once, but twice, my harvest operation was jeopardized by the unwillingness of handlers to bargain with the apricot association.

Prior to harvest, I had a contract with the handler that would be buying my fruit. At the time, the price for apricots had not been negotiated. As an informative note, apricots are one of the most delicate fruits to handle. They must be processed as soon as they are picked or the whole crop will be lost. A delay of even a couple of days would be disastrous.

My first experience was in 1975, my second year in the association. The handler I was to deliver to was failing to recognize the Association as a bargaining unit for its members. The handler was offering a price directly to members, bypassing the Association. The handler refused to negotiate with the Association. They made malicious statements about the Association and its management and tried to encourage me to withdraw by stating they could offer a better agreement if I was not a member of the Association.

Honoring my membership agreement with Apricot Producers of California, I could not deliver my fruit to the handler until an agreement had been reached. All the other handlers had agreed with the Association on prices and conditions, so in the end, my fruit was delivered to another handler. I was fortunate that another handler had purchased my fruit.

The Association took the case to the State of California for redress under the California Agricultural Code (which supplies stronger language than the Fair Practices Act of 1967). But the language was not strong enough. Case law was severely lacking and there was no desire by the administration to press the issue. Officials admitted that the legislation was so vague and unproven that they had not even established procedures or funding to enforce it. Finally, after constant insistence on the Association's part, market enforcement officials visited the handler and obtained assurances of their future intent to follow the law.

I feel that the whole matter could have been avoided if there was a law that stated that handlers must recognize the association as a bargaining unit for its members. Also, if there was a mutual obligation for the Association and the handler to "bargain in good faith", differences would have been aired and perhaps a favorable agreement could have been achieved. But when there is no obligation to meet, how can mutual terms be agreed upon?

My second experience was a couple of years later. I was delivering my fruit to a handler who had agreed to pay me an advance of $10,000.00 and I would receive the balance when a price was settled. Three weeks after the price was settled, I called [illegible] asking for payment. The handler had not agreed with the Association and they stated that the matter was going to arbitration. After making two more phone calles to the handler (by now it was September and I had delivered to them in July) I was told that their legal counsel advised not to pay me until they finalized negotiations with Apricot Producers of California "because you outfit has caused all this trouble", meaning the Association at which time I was a Director.

I wrote a letter to the Bureau of Marketing, requesting their help in the matter. The Association was also communicating with them. After much adue, the handler agreed to pay what they felt was a reasonable price.

Again, I feel I was deliberately discriminated against because I was a member of the Association. It is hard enough to run a profitable operation without having to overcome the above mentioned obstacles. If I had lost my crop both years, my operation would have been seriously affected.

There are unions to protect the laborers who harvest the fruit, unions to protect the truckers who haul the fruit and unions to protect workers who process the fruit. Why is it to much to ask for a union (accredited bargaining association) to protect the farmers who produce the fruit?

I firmly support H.R.3535, the National Agricultural Bargaining Act and I feel that it is necessary legislation that has been a long time coming.

I urge you to also support this needed legislation.

Sincerely,

Dean R Houk

Dean R. Houk

CALIFORNIA CATTLEMEN'S ASSOCIATION

JACK RUSS
President
Ferndale
GEORGE L. COVEL
1st Vice President
Gilroy
WM. B. STAIGER
Executive Vice President
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Zip Code 95814

Vice Presidents
CLAY DAULTON, III
Madera
OTIS ROSASCO
Jamestown
RICHARD HAMEL
Likely

National Cattlemen's Association

April 9, 1980

Congressman Leon Panetta
380 Alvarado
Monterey, California 93940

Dear Congressman Panetta:

The California Cattlemen's Association, representing in the neighborhood of 3,500 commercial beef cattle producers, has reviewed the provisions of H.R. 3535, the National Agricultural Bargaining Act of 1979, and we respectfully request that the beef cattle industry be excluded from this proposed legislation.

We have no quarrel with other commodity groups that may see the need for this proposed legislation, although it is not clear to us what advantages are gained over the Agricultural Fair Practices Act of 1967, and we would express the concern that bargaining legislation not be used to force individuals who may not wish to do so into joining a bargaining association.

Bargaining associations are not a common or accepted marketing tool in the beef cattle industry, and for a variety of reasons we see little indication that they will be in the foreseeable future. Beef is a nationally produced commodity, with cattle produced in every state, and with a unique marketing system that finds calves travelling back and forth across many states during the stages of growing, feeding and processing before reaching the ultimate consumer. Under such circumstances and recognizing the fiercely independent nature of the cattle producer, particularly when it comes to the selling of his product, the provisions of this proposed legislation are neither necessary or acceptable.

Again, we do not oppose other commodity groups who may want and need this proposed legislation, but since it really is not applicable to our industry, is not needed or wanted by our producers, and exclusion of our industry from its provisions will not hurt the proposal, we strongly urge that an amendment be added which will exclude the beef cattle industry from the bill.

Sincerely,

Wm. B. Staiger

Wm. B. Staiger
Executive Vice President

CC: Congressmen Richard Nolan,
Dan Glickman, Daniel Akaka,
Tom Harkin, Steven Symms,
Charles Grassley, Fred Richmond,
Congresswoman Margaret Heckler

WBS/sm

George Silva
Silva Brothers
17490 So. Canyon Road
Los Banos, CA 93635

April 11, 1980

Mr. Joe Crepa, Staff Consultant
House Committee on Agriculture
1301 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Crepa:

My name is Geroge Silva and along with my brother, own 30 acres of apricots in Los Banos, California. I harvest approximately 300 tons of apricots annually.

I am a member of Apricot Producers of California, a bargaining association and I am also a member of the Farm Bureau.

I am submitting this statement in support of the National Agricultural Bargaining Act, H.R. 3535, by Rep. Leon Panetta. My recent experience has made it very clear to me that a stronger bargaining code is needed.

I had a verbal agreement with the handler that he would be purchasing my fruit. The handler had not as yet signed a contract with the Association.

After delivering a couple to truck loads of fruit, the handler informed me that he would pay me $110.00 per ton for my fruit, the negotiated price was $265.00. I immediately stopped delivering to the handler and called the Association. The Association said they could get me a home for the remainder of my fruit. The other handler inspected my fruit and said he would give me $265.00 per ton for it.

Hearing of this arrangement, the first handler protested to the other handler and subsequently they withdrew their offer. The handler then agreed he would pay a "reasonable price" for the fruit. In the end I received $208.00 per ton.

The handler failed to recognize the association as a bargaining unit and would not release me from our verbal contract. He wanted to dictate his own terms and disregard those of the Association. The handler was trying to force me down in price. The whole matter was reminiscent to the days when there were no bargaining associations and handlers dictated the "take it or leave it" attitude.

Through bargaining associations, growers are becoming more secure in their farming operations, but not secure enough. Experiences such as the one I mentioned makes it evident that legislation that would require good faith bargaining and eliminate unfair trade practices is much needed.

I firmly support the National Agricultural Bargaining Act and I urge you to do so also. The fate of the family farm is at risk here.

Sincerely,

George J. Silva

George Silva
Silva Brothers

New Mexico Cattle Growers' Association
2231 RIO GRANDE BLVD., N.W. • BOX 7517
TELEPHONE (505) 247-0584
ALBUQUERQUE, NEW MEXICO 87194

PHIL HARVEY, PRESIDENT
CARRIZOZO

[redacted]
EXECUTIVE SECRETARY
ALBUQUERQUE

PHILLIP BIDEGAIN
FIRST VICE PRESIDENT
MONTOYA

W. D. (DIGGS) DINWIDDIE
VICE PRESIDENT
JAL

W. F. (DUB) MARTIN
VICE PRESIDENT
CIMARRON

JUPE MEANS
VICE PRESIDENT
BUCKHORN

MRS. JERRY CLAYTON
SECRETARY - TREASURER
LOVINGTON

April 11, 1980

Mr. Joseph R. Crapa
Staff Director
House Subcommittee on Domestic Marketing
Consumer Relations & Nutrition
1336 Longworth H.O.B.
Washington, D.C. 20515

Dear Mr. Crapa:

My name is Phillip Bidegain. I am the newly elected President of the New Mexico Cattle Growers' Association. We have approximately 3000 members, and I want to request that you make this testimony part of the Farm Bargaining Legislation Field Hearing scheduled in Sacramento, California, April 18, in behalf of our Association.

The New Mexico Cattle Growers' Association has continuously struggled to preserve the freedoms provided by the free market system. We recognize that it sometimes becomes necessary to bargin as a group or association to bargain effectively for fair prices on certain agricultural commodities. However, these commodities are usually seasonal fruits and vegetables. The beef cattle industry is a nationally produced commodity and in no way resembles the agricultural interests for which this bill was designed or intended. In our opinion the proposed legislation not only does not benefit our industry but violates the ideals set forth by our Association.

Cattle marketing occurs year-round and in every state. The national scope of our production and the mobility of the industry makes group bargaining a rare occurance. As an example, most of the cattle produced here in New Mexico are fed in Texas, Arizona, and Colorado, and processed in other states. Sometimes cattle will change hands a dozen times before their ultimate destination. This would make the accreditation and identification of handlers as proposed by this legislation, impractical and virtually impossible.

While we don't feel the bill was intended to include the beef cattle industry, it is apparent the beef cattle industry will be directly affected by its passage. Many feedlots feed potatoes, grain and some vegetable products. The ultimate result will be an economic impact on the entire industry.

The bill would require handlers of agricultural commodities to bargain in "good faith" with associations of farmers concerning both prices and other terms in the sale of farm products. From past experiences in the labor area, it is a well known fact that "good faith" bargaining violations are very hard to enforce.

The proposed legislation goes to length to protect and promote organizations and associations. Somewhere in the drafting of this legislation the rights of the individual have been overlooked. If this legislation is to truly protect producers, some provision should be made to protect the individual producers from unfair bargaining practices.

In its zeal to draft a bill that would be broad enough to be acceptable by all agricultural groups, the representatives of the bargaining coops who designed this legislation gave the Secretary of Agriculture too much power. The proposed legislation will create added bureaucracy which will have excessive authority. This act would give the Secretary of Agriculture unlimited authority and police power over all agricultural commodities. This would occur in an area where no previous regulation has occured. We have been on record for years in opposition to government intervention and increased government spending -- both of which this act will provide.

The National Cattlemen's Association feels that while the need for this type of legislation may be apparent with some agricultural commodities, the beef cattle industry does not need this type of legislation. They also urge that the beef cattle industry be specifically excluded from the proposed National Agricultural Bargaining Act of 1979. The New Mexico Cattle Growers' Association wishes to support the stand of our mother association, but would like to go on the record with our own comments.

We also feel that the National Agricultural Bargaining Act of 1979 is in direct opposition to our official positions on federal intervention, free enterprise, competition, and a balanced federal budget.

Thank you,

Phillip Bidegain

Phillip Bidegain, President
New Mexico Cattle Growers' Association
P.O. Box 7517
Albuquerque, New Mexico 87194

15 April 1980

The Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition
California Department of Food & Agriculture Bldg.
1220 N Street, Sacramento, CA

Attention: Mr. Joe Crapa, Subcommittee Staff Director

Gentlemen:

Dear Mr. Crapa:

My name is Harold White, 23788 Ave. 184, Porterville, CA and farm 22 acres of olives at this location. For the past several years have had a term contract with Early California Foods, Inc. Each March this contract can be broken by either party. My crop is delivered to the Exeter receiving station (15 miles) and then goes to their Visalia plant (10 miles further). It is generally after picking has started we are notified by the processor by mail the price to be paid for the different sizes of olives per ton.

I am a Farm Bureau member and also a member of the Olive Growers Council.

Early California Foods, Inc. failed to recognize the Olive Growers Council as a Bargaining Association and would not negotiate prices for the 1979 crop. Consequently the farmers received an unfair price for their product once again.

With the passage of HR 3535 this could not happen to the farmer. If a stabilized price could be met that would enable the farmer to plan and budget his farming expenses, a better crop could be produced not only benefiting himself but also the processor and consumer. We need to feel reasonably sure that we will get a fair and just price for the crop before spending large amounts of money to produce that crop and harvest it in the fall of the year. Borrowing money gets more expensive with each year. The farmer cannot survive with the existing conditions and definitely needs a bill such as HR 3535.

Olive growers in this area would certainly use the provisions of this bill and welcome the accreditation of the association. The processors have had everything going their way for so many years I'm sure they have spent very large sums of money to fight the passage of this bill. To negotiate in good faith and to pay a decent price for farm produce would not be welcomed by independent processors I feel quite sure.

Sincerely yours,

Harold L. White

Harold L. White

TELEPHONES
675-3432 • L.D. 675-3467
GONZALES, CALIFORNIA
SALINAS [illegible]-3477

O. P. MURPHY & SONS

"Tomatoes Our Specialty"

POST OFFICE BOX 548 • SOLEDAD, CALIFORNIA 93960

RECEIVED

April 24, 1980

Congressman Thomas Foley
Committee on Agriculture
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Foley:

Re: National Agricultural Bargaining Act of 1979
H.R. 3535

Our firm is a fresh market tomato grower, packer and shipper. Our involvement in growing primarily includes a partnership interest in a farm which cultivates over 1,500 acres of row crops. As a packer and shipper we buy tomatoes from producers on a per ton basis at a price which is based upon the market value of the packed commodity at the time of harvest. Our packing season runs for thirteen weeks and involves tomatoes grown in both the Salinas and the San Joaquin Valleys of California. By the definitions of H. R. 3535 we are both a producer and handler of agricultural products.

As a producer and handler we are in a somewhat unique position. This in no way lessens our interest in this act nor does it diminish the affect which this act, if passed into law, will have upon us. We do believe that all can benefit from a system of collective bargaining. We also believe that individuals should not be discriminated against in the name of a collective good; each bargaining unit should have equal rights.

Under the proposed act, the collective is given more rights than the individual who chooses to negotiate for himself; if the result of his negotiating nets him more than the collective is able to realize in its bargaining. Our reference is to Sec. 5 (b) "If a handler purchases a product from other producers under terms more favorable to such producers than the terms negotiated with an accredited association for such product, he shall offer the same terms to the accredited associations." This removes the drive for an individual to try to advance himself individually. We believe that an individual should be given the same rights and responsibilities under the act as are given an accredited association.

One of the many advantages of farming is the flexability which can be exercised by the farmer when choosing the crops which will be raised for any particular year or season. The choice of which crop will be grown is based upon two considerations; the expected return on the investment to be made and the ability of the ground to produce the desired crop. The expected return on investment in a crop is judged on the estimated yield of the crop times the market value. The market value of a crop can generally be negotiated in advance with a handler or left open to realize the market price at the time of harvest. If a grower finds himself unable to reach an agreement with a handler and he does not want to grow his crop in the open he does have the right to grow any other crop he wants. A grower who has not been able to reach an agreement with a handler should not plant with hopes for a guaranteed market price.

The bill as written could lead a grower to believe that he may expect such a guarantee for his crops whether he has a contract or not. Bargaining in good faith is a requirement of the bill as stated in Sec. 3 (a). That section goes further to state that "Such obligation does not require either party to agree to a proposal or to make a concession." This all is over shadowed by the rights given the Secretary of Agriculture under the bill. The bill provides that the "Secretary may establish a procedure for compulsory and binding arbitration if he finds an impesse in bargaining exists". This bill can take the bargaining process completely out of the hands of the producers and handlers.

Historically, farmers have been some of the most resourceful and independent people in this country. Now they are being encouraged to put their resourcefulness behind them and turn to the Federal Government to solve their problems.

We feel that although this bill has only good intentions behind it, it gives the Secretary of Agriculture too much control over what in the past has been controlled by supply and demand.

Respectfully yours,

Francis P. Murphy

Francis P. Murphy
O. P. MURPHY & SONS

FPM:kn

INDEPENDENT
CLING PEACH PRODUCERS
BARGAINING GROUP
950-D OAKDALE ROAD • MODESTO, CALIFORNIA 95355 • (209) 527-1990

RECEIVED
1980 MAY -6 AM 9:48
OFFICE OF
HONORABLE THOMAS S. FOLEY

April 30, 1980

The Honorable Frederick W. Richmond
Chairman, Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition
House Committee on Agriculture
1301 L. H. O. B.
Washington, D. C. 20515

Subject: H. R. 3535 - Field Hearing
in Sacramento, California,
held on April 18, 1980.

Dear Mr. Richmond:

We wish to voice opposition to H. R. 3535 in its present form, and suggest the Bill be amended to reflect the thoughts expressed below. We also ask that this letter become a part of the record of the Field Hearing held in Sacramento, California, on April 18, 1980.

There definitely are problems in the field of bargaining for the sale of agricultural products. However, unless some of the underlying causes are recognized and dealt with, H. R. 3535 will not solve those problems, but will, in fact, increase the difficulties of growers by the imposition of new and expensive procedures.

It must be recognized that co-op processors are rapidly approaching conglomerate status. In spite of nice sounding rhetoric to the contrary, the fact is that co-op farmers are now very far removed from the management of these giant co-operative processors. Growers who become members of the Board of Directors are granted certain opportunities, other than matters of price, that are not available to the average, smaller member. Although a farmer member of a co-operative processor wants as high a price as possible for his raw product, the management of that co-op finds it in their best interest to have a low commerical price set for that product. This lower price enables management to point to their good record of having paid an amount that exceeds the commerical price received by non co-op growers.

To achieve their goals, co-operative processors encourage their grower members to join bargaining associations. Many members who are on the Board of Directors of co-operative processors become members of the Board of Directors of bargaining associations. In certain bargaining groups, co-op growers outnumber members who sell to commerical processors. These co-op growers in the bargaining association exercise substantial control of the bargaining association and it becomes little more than a tool or lobbying force operating on behalf of co-operative processors. This is true whether the issues pertain to price, grading activities, or the control of grower marketing orders. At one time the largest co-operative processor in the United States had, as a requirement for membership, that its cling peach growers also become members of what was then the only bargaining group representing cling peach growers.

A grower who is a member of a co-operative processor does not sell his raw product. He delivers it to his co-op and it is processed, canned, and then sold on his behalf. He may make a profit or loss from this procedure. If he is sufficiently unhappy with the track record of the management of his co-op, he and others like him already have the means to change that management. He does not need to become a member of a bargaining association to influence the management of his processing co-operative.

Therefore, we urge that this Bill be amended to limit membership in an accredited bargaining association to those growers who sell their products on a commerical basis.

In my letter of July 27, 1979, pertaining to the Washington hearing on H. R. 3535, I stated that Section 4(a), Unfair Practices, should be amended to include a provision that forbids a processor from financially supporting a bargaining association. This is a critical area if a bargaining association is to be free of coercion and economic dependence on the very people with whom it is presumably bargaining. Processors, including co-op processors, use the words "Service Fees" to cloak their financial support of bargaining associations. "Service Fees" are paid by both co-op processors and commerical processors in the cling peach industry, the freestone peach industry, for canning pears, for apricots, for prunes, and also, possibly, to the raisin association. It is a widespread practice in the canning industry in California, and represents a classic case of Conflict of Interest. It is vital that a bargaining association maintain its total independence by a dues structure paid directly by its membership.

We, therefore, request that Section 4(a) be amended to correct this oversight.

Section 5(a) and Section 5(b) - Bargaining in Good Faith - ignores the plight of an individual who is not a member of an accredited association, and denies such an individual grower Due Process of Law. A natural extension of Section 5(a) would indicate that a handler would not be obligated to deal in good faith with anyone other than an accredited association. Section 5(b) requires a handler to offer equal terms to an accredited association as reached with a person not a member of the accredited association. This section again ignores the rights of an individual not a member of that association to receive a price, or terms of sale, equal to those offered by handlers to the accredited association.

We, therefore, ask that Section 5(a) and Section 5(b) be amended to protect a grower who is not a member of an accredited association - both as to the issue of good faith bargaining and as to equal terms of sale.

Section 6, dealing with the subject of accreditation, is unwieldy and impractical. Its wording creates a "CATCH 22" situation. Under this provision you cannot seek accreditation unless you represent a sufficient number of growers. However, it would be almost impossible to form a bonafide bargaining association if there were any doubt about your ability to bargain on behalf of the membership. Dealing with issues on behalf of growers is almost a year round task. It would be extremely difficult to keep the confidence of your membership, or to be treated seriously by processors, if accreditation might be denied or be suspended for any number of reasons as set forth in Section 6. Farmers create an organization to deal with the affairs that affect their interests. They cannot afford and will not pay for an association that is involved in constant hearings or litigation. This might not present a serious problem for a large farm organization that has tremendous outside income from the insurance business or the sale of agricultural supplies, but it would have a killing effect on a bonafide bargaining association supported only by dues.

Section 6 does not specifically provide for the existence of more than one accredited bargaining association within a given industry. Growers should have an opportunity to express themselves as to their choice in bargaining associations, or exercise their choice to not join an association and represent themselves. If provision is made for more than one accredited association, the language pertaining to compulsory arbitration would then have to be redrawn since competing associations dealing with the same processors might have differing approaches to values.

We, therefore, urge that Section 6 be amended to provide for more than one accredited association within a given industry. We also ask that this section be streamlined to provide specific criteria for accreditation so as to minimize the need for hearings and other procedures set forth in the present Bill.

The above suggestions are based on very painful and practical experiences incurred in establishing our organization as a bonafide bargaining group in the cling peach industry. We hope they will serve a useful purpose in dealing with this legislation.

Very truly yours,

Allan Odell

Allan Odell
General Manager

AO/ds
cc: Honorable Thomas S. Foley ✓
Honorable Leon E. Panetta

Prepared Statement of Kenneth A. Davis, General Manager, Prune Bargaining Association

Mr. Chairman and members of the Sub-Committee. The Prune Bargaining Association is a non-profit, agricultural, bargaining cooperative, incorporated in March of 1968 under Chapter 4, Division 6 of the Food and Agricultural Code of California, whose purpose is to (1) improve the economy of the California prune industry, (2) encourage production of quality products and (3) render services to its members, including the selling and marketing of its members products.

Membership in the Prune Bargaining Association is open to all producers of plum-prunes in California. Only producers are eligible and only producers may be elected to the board of directors or serve as officers.

The P.B.A. was formed by producers who found the need for a vehicle to assist them in establishing fair and equitable prices and terms of sale for their crop out of economic necessity and after several years of declining prices. During the first two years of operation, because of resistance from prune handlers to agree to fair prices, it was necessary to resort to third party arbitration proceedings in order to establish prices. During the same period and in subsequent years to the present, anti-association discrimination by some prune handlers has existed towards some of our members and prospective members of the P.B.A. Although the degree of such practices has diminished in recent years, it still exists today. Prune growers are still reluctant to join our Association for fear of retaliation from some handlers.

As an association of primarily small family farms and a relatively small, specialty commodity, we have had the unnecessary experiences with all of the "Unfair Practices" referred to in HR 3535, with respect to producers.

As we have also been part and party to the development of HR 3535 from its inception, we are very familiar with its need, its language, meanings and intent. We support it, as is, one hundred percent. It is a document that has taken years of preparation, compromise and unprecedented cooperation by the various producer associations throughout American agriculture. It is a proposed law that is badly needed by all producers and its passage into law is long overdue.

Its opponents will certainly bemoan its supposed effects on food prices and inflation, erroneously, because they wish to continue the very unfair practices HR 3535 seeks to eliminate. It is certainly within their best financial and power interests to lament higher food prices in disguise of their real desire to deprive the producer of equal marketing entitlement or necessary bargaining equality.

In anticipation of such opponent charges, it should be recognized that it is a proven fact that, food costs will increase substantially per annum at the wholesale and retail level while prices paid to producers remain constant or even decline. HR 3535 is not intended to increase food prices or should it be misconstrued or labeled as such. It is simply designed to assure producers of the rights already possessed by every other segment of our society by establishing fair practice standards for both producers and handlers of agricultural products. Indeed, Congress has found it easy and necessary to allow labor unions and minorities protection against discrimination and coercion and has protected their rights. Agriculture is also a minority and deserves the same protection of law proposed in HR 3535.

As Congressman Panetta has stated, he is hopeful that this hearing will "learn in more detail of the serious abuses that are occurring which warrant federal government involvement in the area of agricultural bargaining. Unless it appears that there is a pressing need to curb abusive and unfair practices, it will be difficult for me to persuade my collegues to proceed to adopt this legislation."

As Congressman Panetta's "collegues" let me assure you and emphatically state, that the only reason that we did not appear as an oral witness, before this hearing is because, WE COULD NOT GET ONE PRUNE GROWER TO APPEAR AS A WITNESS, TO RELATE THEIR EXPERIENCES WITH PAST HANDLER DISCRIMINATION AGAINST ASSOCIATION MEMBERS, FOR FEAR OF RETALIATION FROM SOME HANDLERS. This is fact and this fact alone should be reason enough for this committee, as well as Congress, to pass HR 3535 into law. It will allow producers the long-overdue ability to enhance their position in a market where they are currently at a serious competitive disadvantage by accrediting associations and providing the assistance, sometimes necessary, of mediation and enforcement through the Secretary of Agriculture.

It has been through the long process of proposal, discussion, revision amendment and resolving regional differences for several years. It has the support of the California Farm Bureau Federation, the American Farm Bureau Federation, the National Grange, the National Farmers Union, National Council of Farmer Cooperatives, Secretary of Agriculture Bob Bergland, Director of Food and Agriculture Richard Rominger, as well as the hundreds of grower-owned bargaining associations throughout the United States. What more can this Committee, or Congress, ask?

We, therefore, respectfully beg this Sub-Committee to pass HR 3535.

Thank you for the opportunity to enter this statement on behalf of the Prune Bargaining Association and for holding this hearing in California.

Prepared Statement of Ralph Gillmor, Fremont, Ohio

First I would like to thank you for the opportunity to appear before this committee as a proponent of H.R.35 35.

My name is Ralph Gillmor. I am from Fremont, Ohio, which is located in the North west part of Ohio. This is the area of the State that most of the vegetables are raised. Ohio is the second largest tomato raising State in the U.S.
I farm 500 acres and raise cabbage,for Kraut, Sugar Beets, pickling cucumbers, corn, soybeans and some wheat. I used to raise tomatoes.

I was President of our Tomato Growers Association for seven years and I testified in favor of S B 109 because of being discriminated against for being an Association member. This Bill Passed and is now known as the Agriculture Fair Practice Act. Several years after testifying I decided I could no longer raise tomatoes profitably. I could produce over thirty ton per acre crops of tomatoes, but I very seldom delivered to the Processor over 20 ton to the acre. They have ways of controlling delivery, grading etc. Sweetheart Contracts were and still are very prevalent in our area to keep non members from joining the Association.

I am a State Trustee of Ohio Farm Bureau Board and President of the Northern Ohio Sugar Beet Growers Association, a subsidiary of Great Western Sugar Company. I am also a member of the Ohio Cabbage Growers Association. We have 95% of the growers as members. We do have a Marketing and Bargaining Law in Ohio. To show the need for a National Bill H R 35 35, one of our Ohio processors have their Headquarters based in New York. Our two Ohio based processors gave us a small increase in price. The Head of the New York based Company called and stated that they were not giving the New York growers any increase, and he would not increase in Ohio. He stated," I know your expenses are higher,but that is it. You can take it or leave it." After informing him that we do have an Ohio Law that a Processor must bargain in good faith he came and met with us and we negotiated a contract.

We are fortunate that we have a large percent of cabbage growers as members. Most other contract crop producers are not that fortunate.

We in the Northeastern area would like to ask you to hold a Hearing such as this in our Ohio, Michigan and Indiana area. I can assure you that it would be well attended. H.R.3535 is needed to keep from pitting State against State and Farmer against Farmer.

Thank you again for letting me have the opportunity to testify at this Hearing. I'll try to answer any questions I can.

STATEMENT

OF THE

NATIONAL TAX EQUALITY ASSOCIATION

The National Tax Equality Association (NTEA) appreciates this opportunity to state our position on H.R. 3535. NTEA consists of almost 2,000 taxpaying firms dedicated to the principle of tax equality between competing forms of business enterprise.

NTEA recognizes the important function the cooperative form of enterprise affords farmers. Nevertheless, NTEA stands unalterably opposed to the special privileges accorded the cooperative form of corporation under existing tax and antitrust laws. In our view, H.R. 3535 would extend cooperative antitrust immunity and other privileges even further and establish a coercive and compulsory framework for negotiations that is inconsistent with the concept of a free economy and society.

The enactment of H.R. 3535 would severely limit the freedom of farmers to market their produce as they see fit. For example, Section 4 (a), in effect, denies the farmer the right to freely determine his own clientele, set his own prices, and associate with other individuals of his own choosing. In other words, H.R. 3535 restricts the independent farmer's freedom of contract and association. Aside from its noxious economic effects, it also constitutes a gross violation of individual rights.

The ostensible purpose of this legislation is to outlaw unfair bargaining practices by independent handlers. However, unfair bargaining practices are already prohibited by existing legislation, especially by Section 5 of the Federal Trade Commission Act and Section 1 of the Sherman Act. Moreover, this measure discriminates against independent handlers by exempting cooperative handlers from its provisions.

Under Section 4 (a) an unfair bargaining practice is defined so loosely as to include everyday, routine business practices. This section makes it illegal "to offer to pay or loan money or anything of value, or to offer or give any other inducement or reward to a producer for refusing to join or to cease to maintain membership in an association." Under this section, handlers could be prosecuted merely for furnishing their suppliers with any number of routine services--if the effect was to reduce incentives for suppliers to join a cooperative.

In effect, this prohibition would restrict the competitive activities of independent handlers such as providing equipment, credit, advertising, or transportation for their suppliers. Co-op handlers would be free to provide such services while independent handlers could do so only at their own risk. Thus H.R. 3535 would impose an enormous competitive disadvantage on independent producers.

Furthermore, Section 4 (a) would make it illegal for a handler to refuse to deal with a producer because of membership in a cooperative association. Besides the issues connected with the principle of freedom of association, handlers declining an offer of negotiation would be subject to legal harassment and endless litigation. The burden would fall on the handler to prove that his decision was reached for business reasons not related to cooperative membership. This would open the door to cooperative intimidation of handlers and further limit price competition between suppliers, ultimately resulting in higher consumer prices.

A handler is also prohibited from making any distinction between independent and cooperative producers "with respect to price, quantity, or other terms of purchase, acquisition, or other handling of agricultural products." As a result, a handler could protect himself from prosecution only by offering identical terms of purchase to all producers regardless of possible differences in quality, dependability, convenience, or marketability.

This provision discriminates against the most efficient and productive of the independent agricultural suppliers. It is a fact that the most efficient producers can often realize a normal market profit margin and still offer their supply at relatively low prices. H.R. 3535 would prohibit handlers from passing on the benefits of superior efficiency and lower prices to the consumers. This is another way in which H.R. 3535 would limit competition and promote inefficiency at the expense of consumers.

Furthermore, Section 8 of the Act provides for "compulsory and binding arbitration" under the auspices of the Secretary of Agriculture should negotiations between a handler and "accredited" producers founder or collapse. In short, H.R. 3535 grants the Federal government the right to dictate terms of sale to independent businesses. Even in the event government intervention was not actually employed, the threat of this intrusion would be enough to intimidate handlers and thereby influence the outcome of any agreement. Behind every private negotiation would lurk the coercive police power of the Federal government. Although other sections of H.R. 3535 would greatly centralize and cartelize American agriculture, Section 8 is undoubtedly the most objectionable point of the measure from an economic and constitutional standpoint.

Given the consensus that business and our economy are suffering from excessive regulation, this would not seem to be a propitious moment for the enactment of H.R. 3535. This measure would augment the existing tendency of public policy to encourage centralization of agricultural production, and at the same time burden independent businesses with onerous and unreasonable regulations. Most importantly, H.R. 3535 would mandate even more extensive government intervention in an important sector of our economy and could lead, explicitly or implicitly, to increased government-producer control of agricultural production.

NTEA, in contrast, believes that it is in the best interest of business, consumers, and ultimately the farmers themselves to move in precisely the opposite direction. We support the gradual relaxation of rules and regulations which restrict production and lead to higher consumer prices. We support the enactment of S. 382, which would require government agencies, including the U.S.D.A., to more fully consider the competitive effects produced by their decisions.

The government has already provided cooperatives with more than ample market power without the enactment of H.R. 3535. As noted by the National Commission for the Review of Antitrust Laws and Procedures Report, "Testimony before the Commission shows that the threat of monopoly by some cooperatives is now substantial. In recent years there has been an accelerating trend toward concentration in agricultural marketing... Today it is not uncommon for one cooperative to dominate the national production of a single fruit. Some staple crop cooperatives would like to attain similar market control of their commodities."

To sum up, the provisions contained in H.R. 3535 would tend to establish cooperatives as exclusive bargaining agents for farmers, whether they liked it or not. It would undermine the viability of independent farmers and independent handlers while extending the already considerable monopoly power of cooperatives. It would result in more government regulations and higher consumer prices. Consequently, NTEA strongly recommends that H.R. 3535 be rejected by the Subcommittee.

Thank you for this opportunity to present our views on this important matter.

PREPARED STATEMENT OF RAYMOND POE, FARM BUREAU MARKETING ASSOCIATION OF IDAHO, INC.

Mr. Chairman and Distinguished Members of The Committee:

I want to thank you for the opportunity to respond in support of the National Agriculture Bargaining Act, H.R. 3535. My name is Raymond Poe and I farm near Meridian, Idaho, where I presently raise the following forward contracted crops: high moisture corn, garden seed beans, certified seed wheat, carrot seed, and the past few years, sweet corn for canning; but due to the plant closure in our area I will not be growing any sweet corn this year.

I am preparing this testimony on behalf of myself, and as manager of the Corn Marketing Division of the Farm Bureau Marketing Association of Idaho, Inc. Even though I attended the hearing I was not able to give testimony at Sacramento due to the number already scheduled.

The Farm Bureau Marketing Association of Idaho, Inc. was formed in 1974 to primarily organize the growers in a bargaining effort representing 13,000 acres of sweet corn produced for the three processors in the southwestern Idaho and eastern Oregon area. In the past year I have been involved with other grower representatives forming a committee to meet with these processors. Each processor has a little different approach but basically they all employ a "last minute" or "wait and see" attitude. Without any set of rules or guidelines to conduct a bargaining meeting it makes it difficult to bargain in good faith. The grower is placed at a disadvantage from the beginning. He has to know what the terms and conditions are for his sweet corn contract, for example so he can make some management decisions in respect to his total crop program. In my area, most alternative crops are planted earlier than sweet corn so it is necessary that these negotiations be completed prior to planting any crop in the spring, and the Association has not been able to accomplish this in years past. The processor has used this to his advantage, leaving the grower to guess and, in fact, committing his acres, even though they are not signed, well in advance to the final negotiations and agreement.

In the past several years the processors have done very little negotiating and their counter-offers were considered by most growers as insulting. For example, one processor offered a "take it or leave it" increase of $1.00 per ton, which is a 2% increase and the costs of production are up approximately 20%.

The cost of raw product in a can of corn is only 11% of the consumer cost. If the grower could get an increase of only 1¢ per can of corn, he would realize an additional return for his crop that would offset his increased cost of production, providing him a better opportunity to maintain his operation. There is as much as 5¢ per #303 can, difference between the same brands in the same town.

As another example, a processor elected to charge additional freight to growers who farmed in the fringe or farther away areas, but offered no reimbursement for those close by. This was treated on an equal basis in the past but the processor determined they could obtain the acres closer leaving some of our grower-members out, or at a disadvantage.

At this time processors do not have to deal with only Association members. They circumvent the Association by giving non-members contracts so a new grower can "get his foot in the door" leaving the Association with no means to a successful method of negotiating in good faith.

Therefore we should develop and refine a system whereby producers and processors can reach satisfactory agreements with a minimum of governmental influence in the marketing and regulatory functions. So a grower must accept the responsibility of producing what the markets can absorb and the best way I know is to negotiate these contracts fairly. A climate in which contracts could really be NEGOTIATED would encourage a more orderly and stable method of marketing.

I see a very urgent need for legislation which will establish more equitable rules for negotiating producer-processor contracts. Therefore, the tools that H.R. 3535 offer seem more equitable and fair, and could, in the long run, benefit both the producer and the processor.

Thank you, Mr. Chairman. We will be happy to respond to any questions you and the committee might have regarding our position on this legislation.

PREPARED STATEMENT OF CLARENCE VOSTI, DIVERSIFIED GROWER, GONZALES, CALIF.

My name is Clarence Vosti. I reside in Gonzales, California, and am a diversified grower from the Salinas Valley of California. My farming operation is generally row crops, including sugar beets, beans, cannery tomatoes, and vegetable crops for the fresh market. I am currently Chairman of the California Farm Bureau Sugar Advisory Committee. I also serve as an elected Director of the California Beet Growers Association and, in that capacity, as a member of the Association's Contract Committee. The California Beet Growers Association represents 98 per cent of the producers of sugar beets in California.

I support HR-3535, the National Agricultural Bargaining Act. This legislation should be of great value to growers of our state, since it provides for good faith bargaining between the farmer and processor and the mutual obligations of each party.

Since I serve as a member of the California Beet Growers Association's Contract Committee, I have a good working knowledge of the practices and procedures used to develop sugar beet contracts between growers and the four California sugar beet processors. The California Beet Growers Association and their processors have practiced good faith bargaining for a number of years.

The sugar beet grower/processor bargaining relationship goes back several decades. Under the Sugar Act, which expired at the end of 1974, if growers and processors could not develop a mutually satisfactory contract, there were provisions whereby the Secretary of Agriculture issued a fair price determination for each sugar beet crop. This determination was issued after hearings where growers and processors presented their sides of the issue and the Secretary made a determination as to the final outcome and spelled out each party's responsibility under the contract. Without the Sugar Act, our bargaining has continued, and we have been able to develop a sugar beet contract for our crop.

The California sugar beet contract is unique since both the grower and processor share in the return of the final product, refined sugar. Because of this sharing relationship, both grower and processor gain from improvements in price and suffer when the price declines. The price for our sugar is determined by the world sugar market. Because of our contract, negotiations with the processors do not center necessarily on the price provisions. We do, however, negotiate the sharing percentage of the return from the sale of refined sugar and also settle fringe issues to the price provisions, such as seed prices, hauling allowances, initial payments, and others.

I mentioned earlier that the sugar beet grower/processor relationship is strong, and we expect to continue the mutual respect of each party as has developed over the years. Three of the four California sugar beet processors are publicly owned corporations, and the fourth is a grower cooperative from Minnesota. Contracts from all companies are similar in form and content, and the producers growing for the cooperative sell their crop as non-member business.

Because of the structure of the processors, management of the corporations do from time to time change due to retirements, acquisitions, policies, etc., and because of our current volatile economic situation, passage of HR-3535 provides for a continuation of our voluntary good faith bargaining obligations The Bill is also important since it sets forth guidelines for accreditation of associations and clearly identifies the types of products represented by the association. It provides that the association has binding contracts with its members and that it represents a significant amount of producers.

In reviewing Section 6, I find that the California Beet Growers Association now fits in all of the above categories. The Association has support of 98 per cent of the producing growers in California. Eighty per cent of the Membership have signed marketing contracts with the Association, appointing it as the Members' agent for bargaining. Among other provisions currently in effect is one whereby the processors deduct from money due growers dues for the Association and pay these directly to the Association.

It is important that although HR-3535 does not mandate that either party agree to a proposal or make a concession, it does provide for mediation services over contract disputes.

I urge your passage of this legislation from the House Agricultural Committee to the full House of Representatives for consideration.

WRITTEN TESTIMONY

POTATO GROWERS OF IDAHO, INC.

ALLAN WOOD, PRESIDENT

ON

H. R. 3535

My name is Allan Wood and my address is Route #6, Caldwell, Idaho, 83605. I am a potato grower on a diversified farming operation which I own in southwestern Idaho. I am also president of the Potato Growers of Idaho, Inc., which is a voluntary cooperative of some 1600 potato growers in Idaho. This written testimony in support of H. R. 3535 is being submitted both on an individual and association basis.

Potato Growers of Idaho, Inc. (PGI) is organized in 7 districts throughout the potato growing areas of southern Idaho. One of the association's primary functions is to negotiate each year with buyers of contract potatoes and to determine and procure the best possible approved contract for its members. This settlement, if reached by our bargaining committees, also serves as the approved contract for non-members who grow contract potatoes. The association does not take title to the potatoes and leaves the decisions with the grower as to whom he will contract with and the acreage or production involved. I have also served as Vice-President of Bargaining for the association which has given me first-hand insight into bargaining problems for the potato grower under the current law.

It has been my experience and that of the association in our bargaining efforts that the Agricultural Fair Practices Act of 1967 is a step in the right direction. However, it leaves a lot to be desired in accomplishing the purposes for which it was designed to arrive at acceptable contract negotiations and terms in order to protect the interests of potato producers. We, therefore, see a definite need for this legislation (H. R. 3535) under consideration in this field hearing by the House Ag Domestic Marketing Subcommittee and appreciate this opportunity to add our comments to the hearing record.

Under the current law it is unlawful for any handler knowingly to engage or permit any employee or agent to engage in the following practices:

> (a) To coerce any producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association of producers, or to refuse to deal with any producer because of the exercise of his right to join and belong to such an association; or
>
> (b) To discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of his membership in or contract with an association of producers; or
>
> (c) To coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler.

Unfortunately, the success in enforcing abuses has been extremely limited and handlers have little concern with its provisions. Some potato processors and handlers in Idaho have openly discouraged growers from joining Potato Growers of Idaho, encouraged other growers to discontinue their membership if they wanted a growing contract or sale of their open potatoes.

circumvented PGI during negotiations with contracts to non-member growers, and offered a two-year contract package on a "take it or leave it" basis.

One potato processing company in particular, Ore-Ida Foods, is a consistent abuser of the 1967 Act. This Company's attitude and practices resulted in a law suit, Potato Growers of Idaho v. Ore-Ida Foods, Inc., (Civil Number 78-1099) in April of 1978. The suit was brought on by a series of events that began with our first formal negotiating session in February of 1978. The Company offered the same contract as the previous year with no price increases. We (PGI) counter offered a 12% increase. This initial meeting ended with the understanding that we would present the Company's offer to a grower meeting the following week. As chairman of the bargaining committee involved, I specifically asked the Company spokesman three times if he was going out with the contract and he emphatically denied that he was. He said that he was just going to show it to some other people.

The second negotiating meeting in February was devoted mostly to discussions of a base price adjustment formula for a second year. It concluded with the understanding that "good faith" negotiations were continuing. Testimony in the law suit revealed, however, that the Company had already printed a contract before our first negotiating meeting with a small price increase and began offering it to non-members just two days after that initial meeting. In this offer to independent growers, they were assured of "unlimited acreage" if they signed the contract. Some were also told they would receive a price increase adjustment if PGI got a better settlement from the negotiations that were in progress.

Bargaining association members were discriminated against in competing for their acreage because of their membership agreement with the association and our reliance on the Company's position that "good faith" negotiations were in progress.

The impact of this Company tactic on our membership as it relates to them has been devastating, especially around the Company's plant in Burley, Idaho. Grower resignations show a pattern in that area and clearly show intimidation of growers to terminate their PGI membership agreement in order to get contracts with the Company.

The same "above the law" attitude and negotiating policy has surfaced in the 1980 negotiations following last year's settlement of the law suit. In our initial meeting in January, the Company informed our bargaining unit that negotiations would be confined to a 1980-81 contract package. Previous negotiations on advanced year contracts had always been conducted separately. The association's State Board unanimously voted to direct all bargaining units to cease advanced year contract negotiations because of economic uncertainties, so the Company gave the ultimatum of "take it or leave it" and went to the field with the contract package. Acreage that was restored to our members in the settlement of the law suit was again placed in jeopardy and many ex-members are signing the package with assurance from the Company that the 1981 portion will be improved if PGI negotiates a better contract.

I use these specific examples because they are such blatant abuses and point out the deficiencies of the Agricultural Fair Practices Act of 1967. They also point out the need for this

National Agricultural Bargaining Act, H. R. 3535, to give the potato grower a fair competitive position against the large, multi-national corporation in the bargaining process.

Consequently, we submit this written testimony in support of H. R. 3535 which Potato Growers of Idaho, Inc. feels will require real intent in "good faith" bargaining, will eliminate the unfair trade practices outlined in this testimony, and will drastically improve the enforcement provisions of the current law.

The support of the members of the House Ag Domestic Marketing Subcommittee would be greatly appreciated and I respectfully request your positive consideration of this legislation. Further, I express my appreciation and that of the Potato Growers of Idaho to Chairman Richmond for this opportunity to submit this written testimony into the hearing record.

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